

1
2 UNITED STATES DISTRICT COURT
3 WESTERN DISTRICT OF NEW YORK
4 No. 1:10-cv-00569-RJA

5 -----x
6 PAUL D. CEGLIA,

7
8 Plaintiff,

9
10 vs.

11 MARK ELLIOT ZUCKERBERG,
12 Individually, and
13 FACEBOOK, INC.,

14
15 Defendants.
16 -----x

17
18 July 11, 2012
19 10:03 a.m.

20
21 Videotaped deposition of LARRY F.
22 STEWART, held at the offices of Gibson,
23 Dunn & Crutcher LLP, 200 Park Avenue,
24 New York, New York, pursuant to notice,
25 before Cary N. Bigelow, Court Reporter,
a Notary Public of the State of New York.

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A P P E A R A N C E S:

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ALEXANDER H. SOUTHWELL, ESQ.
MATTHEW BENJAMIN, ESQ.
AMANDA AYCOCK, ESQ.
SRIPRIYA NARASIMHAN, ESQ.

ALSO PRESENT:

PETER TYTELL
GERALD LAPORTE
NADER KHORASSANI, Summer Associate,
Gibson, Dunn & Crutcher, LLP
(a.m. session)
ANNA CHASE, Summer Associate,
Gibson, Dunn & Crutcher, LLP
(p.m. session)
DANIEL McCLUTCHY, Videographer

1
2 THE VIDEOGRAPHER: Good morning. We
3 are now on the record. Please note that the
4 microphones are sensitive and they pick up
5 whispering and private conversations.
6 Please turn off all cell phones or place
7 them away from the mics as they can
8 interfere with the deposition audio.
9 Recording will continue until all parties
10 agree to go off the record.

11 My name is Daniel McClutchy
12 representing Veritext New York. The date
13 today is July 11, 2012, and the time is
14 approximately 10:03 a.m. This deposition is
15 being held at the office of Gibson, Dunn &
16 Crutcher located at 200 Park Avenue in New
17 York, New York.

18 The caption of this case is Paul Ceglia
19 versus Mark Elliot Zuckerberg and Facebook
20 Inc. This case is filed in the U.S.
21 District Court, Western District of New
22 York, case number 1:10-cv-00569-RJA. The
23 name of the witness is Larry Stewart.

24 At this time the attorneys present will
25 identify themselves and the parties they

1
2 represent and then our court reporter, Cary
3 Bigelow, representing Veritext, will swear
4 in the witness and we can proceed.

5 MR. SNYDER: Orin Snyder for the
6 defendants.

7 MS. AYCOCK: Amanda Aycock for the
8 defendants.

9 MR. SOUTHWELL: Alexander Southwell for
10 the defendants.

11 MR. BENJAMIN: Matthew Benjamin for the
12 defendants.

13 MS. NARASIMHAN: Sripriya Narasimhan
14 for the defendants.

15 MR. SOUTHWELL: And we have a summer
16 associate with us, Nader Khorassani.

17 MR. BOLAND: Dean Boland for
18 Mr. Ceglia.

19 MR. SOUTHWELL: And just for the
20 record, we have Gerry LaPorte and Peter
21 Tytell, defendants' experts, also present.

22 L A R R Y F. S T E W A R T, called as a
23 witness, having been duly sworn by a Notary
24 Public, was examined and testified as follows:

25 EXAMINATION BY

1 L. Stewart

2 MR. SNYDER:

3 Q. Good morning, Mr. Stewart.

4 A. Good morning.

5 Q. You just swore to tell the truth;
6 correct?

7 A. Yes.

8 Q. And you understand that knowingly
9 making a false statement that's material to the
10 proceedings under oath is a crime?

11 A. Yes.

12 Q. And I want to ask you whether you
13 consider yourself bound, sir, by the American
14 Academy of Forensic Science Code of Ethics and
15 Conduct.

16 A. They have a code of ethics and I'm a
17 member, so yes, I'm bound by that.

18 Q. So the opinion you give in this case --

19 MR. SNYDER: Withdrawn.

20 Q. Are you aware that section 2 of article
21 2 of the code subjects members like you to
22 various penalties, including expulsion, in the
23 event that you provide an expert opinion that
24 falls below the standards set forth by the
25 academy?

1 L. Stewart

2 A. I assume it does say that, I hope it
3 does say that.

4 Q. Are you aware that the code of ethics
5 states that no member, such as you, shall
6 materially misrepresent data or scientific
7 principles in reaching a conclusion?

8 A. Well, as I mentioned, I don't have the
9 code in front of me, but I assume it says
10 something like that.

11 Q. Now, before we get to your opinion,
12 sir, I just want to ask you whether you
13 understand that it's the defendant's position in
14 this case that Mark Zuckerberg never signed the
15 so-called Work For Hire document on which the
16 plaintiff is basing his claim in this lawsuit.

17 Are you aware of that?

18 A. It's not my understanding of what
19 Mr. Zuckerberg has said, no. I don't know what
20 he said.

21 Q. It's your sworn testimony here today,
22 sir, that as you sit here today you have no idea
23 what Mr. Zuckerberg said with regard to whether
24 he did or did not sign the Work For Hire
25 document?

1 L. Stewart

2 A. That's my testimony, yes.

3 Q. Have you read Mr. Zuckerberg's sworn
4 declaration in this case?

5 A. No.

6 Q. Have you asked anyone, Mr. Boland or
7 Mr. Ceglia, what the defendants' position is with
8 respect to whether they signed or didn't sign the
9 Work For Hire document?

10 A. No, I would not do that, that would not
11 be proper.

12 Q. Have you conducted a Google search
13 about this case prior to today?

14 A. About --

15 Q. About this case.

16 A. -- anything about this case?

17 Q. Have you conducted any Google search
18 concerning this case prior to today?

19 That would be a yes-or-no answer.

20 MR. BOLAND: Objection.

21 He can answer how he wants to answer,
22 Mr. Snyder.

23 A. I am trying to think.

24 I'm certain in the past year I have
25 done a Google search where I have had Facebook in

1 L. Stewart

2 the name, yes.

3 Q. Do you think I just asked you whether
4 you conducted a Google search concerning
5 Facebook?

6 A. Concerning this case, and that's one of
7 the defendants.

8 Q. So you have, prior to today, conducted
9 a Google search about this case?

10 A. Not specifically about this case. I
11 have done Google searches where defendant's name
12 was in the search, I'm sure.

13 Q. Are you aware that the defendants'
14 position in this case that the Work For Hire
15 contract attached to the complaint is a fraud, a
16 fake, a forgery, not authentic?

17 A. I assume that's your position, yes, I'm
18 aware of that.

19 Q. You just used two different verbs,
20 assume and aware; is that correct?

21 A. Yes.

22 Q. Are you aware that those two words mean
23 very different things?

24 A. They can.

25 Q. Do you know, sir, as you sit here

1 L. Stewart

2 today, that our position is that this contract is
3 a fraud or are you assuming it?

4 MR. BOLAND: Objection.

5 You are changing the question,
6 Mr. Snyder.

7 Are you asking your position or the
8 defendants by themselves?

9 A. It's a common-sense answer. We
10 wouldn't be having a case if you didn't have a
11 different opinion than us.

12 Q. As you sit here today, sir, do you have
13 actual knowledge that the defendants have taken
14 the position that the Work For Hire contract is a
15 fake?

16 A. Actual knowledge?

17 Q. Yes.

18 A. I haven't talked to Facebook or
19 Zuckerberg. I have seen the original documents
20 filed in this case and from that I can say that
21 your position is different than ours, that you
22 feel the document's fraudulent.

23 Q. What documents have you read that
24 indicate defendants' position that the Work For
25 Hire document is fraudulent?

1 L. Stewart

2 A. I don't know what the name of the
3 document is. The original filing in the case
4 where there was a -- the Court case initiated
5 based on two different beliefs, one side felt the
6 document was real, one side felt that it was
7 fake.

8 Q. Have you read on the Internet
9 statements that I have made, sir, to the effect
10 that this case is a fraud and that Mr. Ceglia is
11 perpetuating a criminal fraud on the court?

12 A. I read, I believe, an Associated Press
13 article where you said that.

14 Q. And so do I understand that it's
15 defendants' position that Paul Ceglia is
16 committing a crime in connection with the
17 prosecution of this lawsuit?

18 A. I believe that article said that as
19 well, yes.

20 Q. And do you understand, sir, that the
21 defendants have moved to dismiss this lawsuit on
22 the basis that the case is predicated on a
23 fraudulent document?

24 A. Yes.

25 Q. And do you understand that Mr. Ceglia

1 L. Stewart

2 has submitted your report, sir, among others, in
3 response to our allegation that he is committing
4 a criminal fraud on defendants and the Court?

5 A. Well, that's an interesting way to put
6 it, but yes, he submitted my report to the Court.

7 Q. Do you understand, sir, that it's the
8 defendants' position that you, sir, have
9 submitted a report which you signed that is being
10 used in furtherance of a crime?

11 A. I have no way of answering that. My
12 report has nothing to do with a crime.

13 Q. You would agree, sir, that if in fact
14 the Work For Hire contract is fraudulent --
15 assume that as a hypothetical -- and that
16 Mr. Ceglia under this hypothetical submitted your
17 report to further that fraud, that your report
18 would, under that hypothetical, serve to further
19 Mr. Ceglia's fraud?

20 A. I'm not going to assume something I
21 don't believe.

22 Q. Now, you are not a computer forensic
23 expert, are you, sir?

24 A. I have supervised computer experts, I
25 have some knowledge in the area, but I don't

1 L. Stewart

2 consider myself one.

3 Q. So the answer is you are not a computer
4 forensic expert; correct?

5 A. I can only answer it the way I have. I
6 have quite a bit of knowledge of the subject, I
7 have supervised the area in my laboratory and I
8 have technically and administratively reviewed
9 reports in the area.

10 Q. Have you ever been certified by any
11 society anywhere in the world as a computer
12 forensic expert?

13 A. No. That's why I don't consider myself
14 an expert in the field, although I have
15 supervised it.

16 Q. So let me ask the question again one
17 more time.

18 Am I correct, sir, that you are not a
19 computer forensic expert?

20 A. It depends on what you want to refer to
21 as a computer expert.

22 Do I meet the Frye Rule standard?

23 Probably.

24 Do I consider myself an expert?

25 No.

1 L. Stewart

2 Would I pass a Daubert test?

3 No.

4 Q. No court has ever certified you as an
5 expert in computer forensics; correct?

6 A. That's not true. I probably -- I have
7 used computer science in some of the earlier
8 cases that I've testified in.

9 Q. Do you think my question, sir, was
10 whether you ever used computer forensics in a
11 case you testified in?

12 A. Yes, I do.

13 MR. SNYDER: Can you please read back
14 the last question, sir.

15 (Record read.)

16 MR. BOLAND: He's just reading it back.

17 Q. Can you answer that question?

18 MR. BOLAND: There you go.

19 A. I think I did.

20 It was part of testimony, so in that
21 case the Court has certified me.

22 Q. Which court?

23 A. I don't know, it was in the early years
24 of my career.

25 Q. I'm going to leave a blank in the

1 L. Stewart

2 transcript and ask, sir, that you tell the Court
3 in that blank which judge and which court in
4 which year, including the caption of the case,
5 certified you as a computer forensics expert.

6 TO BE FURNISHED: _____
7 _____

8 A. It will remain blank.

9 As I put in my declaration, there were
10 a number of cases in the early years we did not
11 track and so I'm going based on recollection, so
12 there's no way I can give you that information
13 other rather than my testimony.

14 Q. We have to take your word for it,
15 right, sir?

16 A. It's up to you.

17 Q. And you've been deposed before many
18 times, have you not?

19 A. Yes, I have.

20 Q. Are you aware of the Western District
21 of New York's rules concerning your testimony
22 today?

23 A. I'm aware of the federal rules, I
24 assume that encompasses the western district.

25 Q. You are not aware of any specific rules

1 L. Stewart

2 that govern the proceedings in this court as it
3 relates to depositions; correct?

4 A. That's correct.

5 Q. Did you meet with Mr. Boland before
6 testifying today?

7 A. Yes.

8 Q. When?

9 A. Approximately 9:30 to 9:45.

10 Q. Did you talk to him on the phone prior
11 to that in preparation for the testimony today?

12 A. I've talked to him many times prior to
13 that, yes.

14 Q. And did you talk to Mr. Agentieri?

15 A. Many times.

16 Q. And did you meet or speak with
17 attorneys from the Milberg firm?

18 A. Yes.

19 Q. Sanford Dumain?

20 A. Yes.

21 Q. Jennifer Young?

22 A. I don't know.

23 Q. Melissa Clark?

24 A. I don't know.

25 Q. Were they involved in helping you

1 L. Stewart

2 prepare your report, Milberg Weiss, the Milberg
3 firm?

4 No longer Weiss, they took his name off
5 the firm.

6 A. No, they were not.

7 Q. Did you talk to Paul Ceglia before your
8 testimony today?

9 A. One time.

10 Q. When was that?

11 A. A few months ago.

12 Q. What did he say and what did you say,
13 as best that you can recall?

14 A. I asked him about the storage
15 conditions of the Facebook contract and he said,
16 he gave me verbally what the storage conditions
17 were and --

18 Q. What did he say, sir?

19 A. He told me that it was stored in a home
20 that was a part-year used home up in New York and
21 that the home was not heated, it didn't have --
22 it didn't even have a heating system, from what I
23 understand, and he had to winterize the house
24 whenever he left it.

25 Q. Have you told us everything you can

1 L. Stewart

2 recall about what Mr. Ceglia said to you during
3 this phone call?

4 A. Yes. I asked him to back that up with
5 a declaration so I could refer to that.

6 Q. Did he?

7 A. Yes, he did.

8 Q. Did he say anything else during this
9 phone call?

10 A. Not that I recall.

11 Q. And how long was the phone call?

12 A. The call itself, I believe, was a half
13 hour or so. Mr. Ceglia's part in the call was
14 about two minutes.

15 Q. Who else was on the call?

16 A. Mr. Boland and Mr. Blanco.

17 Q. And that's your partner Mr. Jim Blanco?

18 A. He is not a partner, no.

19 Q. You don't run a business with him?

20 A. No.

21 Q. You don't have a business that shares
22 your two names?

23 A. We have a shared office space in
24 Washington, D.C. and he experimented with
25 creating a Web page that showed that office as

1 L. Stewart

2 being a shared space, but it has never gone
3 anywhere.

4 Q. You hold yourself out to the public as
5 having a business together, do you not?

6 A. No.

7 Again, I believe there's a Web page out
8 there that says that, but that's not the truth.

9 Q. There's a Web page that says Blanco &
10 Stewart with an ampersand between your names,
11 forensic document examiners; correct?

12 A. Right, it's advertising the Washington,
13 D.C. space.

14 Q. It's your testimony that although you
15 hold yourself out to the public as being Blanco &
16 Stewart forensic document examiners, in fact you
17 are not in business together?

18 A. No, it's not my testimony, it's not
19 what I said.

20 I said that there's a Web page that we
21 experimented with and we set up, but we have
22 never gotten any business that way, we do not
23 conduct business together. The only thing we're
24 doing is sharing expenses of the office space
25 in D.C.

1 L. Stewart

2 Q. You don't conduct business together?

3 A. No.

4 Q. You don't refer matters to one another?

5 A. That's not conducting business

6 together. We have referred matters to each

7 other, yes.

8 Q. Is it your sworn testimony you've never
9 shared a fee?

10 A. We've never shared a fee.

11 Q. And is there any signage "Blanco &
12 Stewart Forensic Document Examiners" in or around
13 your offices?

14 A. No.

15 Q. Did you speak with Valery Aginsky at
16 any time before submitting your report?

17 A. Yes.

18 Q. When?

19 A. Probably around June or July of last
20 year.

21 Q. And what did you say and what did the
22 doctor say?

23 A. I believe I asked him about what his
24 findings were to date, I recall him telling me
25 that he did physical examinations only, I recall

1 L. Stewart

2 him telling me that he suggested chemical
3 analysis.

4 Q. Did you take notes of that call?

5 A. No.

6 Q. Did you record the call?

7 A. No.

8 Q. Anything else you can recall about the
9 phone call?

10 A. No.

11 Q. Did Dr. Aginsky tell you that images
12 were taken of the so-called Work For Hire
13 contract in or around January of 2011?

14 A. He didn't tell me that, but I believe I
15 had received that from Mr. Argentieri.

16 Q. Did you ask Mr. Aginsky how they
17 appeared, the Work For Hire document, when he
18 examined it?

19 A. No. The call I had to him was before
20 I'd even examined the document. At that point I
21 high-resolution scanned images that he had taken,
22 so I knew how the document looked.

23 Q. How about Mr. Osborn, did you ever
24 speak to him?

25 A. No.

1 L. Stewart

2 Q. Do you know whether Mr. Osborn or
3 Dr. Aginsky are still experts for the plaintiff
4 in this case?

5 A. No. You'd have to ask Mr. Boland or
6 Mr. Argentieri.

7 Q. Did you review your report before your
8 testimony today?

9 A. Of course.

10 Q. When did you last read it?

11 A. I read sections of it about five
12 minutes before I came in.

13 Q. And did you notice any errors in the
14 report?

15 A. No.

16 Q. Before you sign and submit a report, do
17 you read it carefully to make sure that it is
18 accurate and correct?

19 A. Yes.

20 Q. And if you see any errors do you
21 correct them?

22 A. Of course.

23 Q. Do you consider yourself a careful
24 writer when you are writing your reports?

25 A. Yes.

1 L. Stewart

2 Q. Did you write this report yourself, sir?

3 A. Yes.

4 Q. Every word?

5 A. Yes.

6 Q. Every punctuation mark?

7 A. Yes.

8 Q. Is it your sworn testimony that

9 Mr. Boland didn't edit it in any respect?

10 A. I had him read it before I issued it,
11 but he did not edit it.

12 Q. Is it your sworn testimony that
13 Mr. Boland did not change any words in the report
14 between the time you gave him a draft and it was
15 submitted to the Court?

16 A. Right. Mr. Boland did not change any
17 of my words.

18 Q. So the report that you submitted to
19 Mr. Boland for his review is the exact same as
20 the report that was submitted to the Court?

21 A. No, I doubt that. It had many
22 iterations that I made up to the point that I
23 submitted it, there were a number of additions
24 that I made, I made editorial changes to it.

25 Q. And did Mr. Boland make any suggestions

1 L. Stewart

2 to you in terms of how to change the report?

3 A. I think I recall him making some
4 general observations about placement of
5 information, but nothing material.

6 Q. When you say nothing material, what do
7 you mean by that?

8 A. Nothing that would have changed any
9 observation or conclusion, anything that was
10 meaningful in the report.

11 Q. But you did proofread your report
12 before you submitted it?

13 A. Yes, I proofread it.

14 Q. Let me show you a copy of your report
15 which we will mark as Stewart 1.

16 We are going to go sequentially, so
17 this will be Exhibit 13.

18 (Defendants' Exhibit 13, declaration of
19 Larry Stewart in support of plaintiff's
20 forthcoming response to defendants' motion
21 to dismiss for fraud, marked for
22 identification, as of this date.)

23 Q. This is your report; right, sir?

24 A. It looks like it.

25 Q. Let me direct your attention to page 12.

1 L. Stewart

2 Let's start by looking at the first
3 paragraph which starts with Q1.

4 Do you see that?

5 A. First paragraph under the section
6 "Exhibits," yes.

7 Q. Yes.

8 In this paragraph you described the
9 so-called Work For Hire document; correct?

10 A. Yes.

11 Q. And first you describe the document's
12 title; correct?

13 A. Yes.

14 Q. Why do you put it in all caps?

15 A. Because that's what the title of the
16 document is.

17 Q. Okay.

18 The second sentence of that paragraph
19 reads "Page 1 of the document bears a handwritten
20 interlineation indicating 'Providing Web design
21 is funded by May 24, 2003' along with two sets of
22 witnessing initials."

23 Did I read that correctly?

24 A. Yes.

25 Q. Let me hand you the Work For Hire

1 L. Stewart

2 document, which we will mark as Exhibit 14.

3 (Defendants' Exhibit 14, photocopy of
4 Work For Hire contract, marked for
5 identification, as of this date.)

6 MR. BOLAND: Just to be clear, it is a
7 copy of the Work For Hire document.

8 Q. That was produced to defendants as
9 scans taken by Valery Aginsky during the
10 expedited discovery phase.

11 Have you seen this scan before?

12 A. I can't attest it's the one from Valery
13 Aginsky. I've seen the document before.

14 Q. Did you ever review Dr. Aginsky's scans?

15 A. Yes. I told you that I received them
16 early on from Argentieri.

17 Q. Let me present you with what I will
18 tell you is a scan of the Work For Hire document
19 created by Dr. Aginsky in January 2011. I would
20 like to direct your attention to the handwritten
21 interlineation on page 1 of that document.

22 A. Yes.

23 Q. Can you read the handwritten
24 interlineation in the bold ink handwriting?

25 A. It's running together, but it appears

1 L. Stewart

2 to read providing Web design or designer or
3 designing -- I can't tell -- is finished by May
4 24, 2003, and then it's got two sets of initials.

5 Q. So let's go back to your report,
6 Defendants' Exhibit 13, where you purport to
7 quote the Work For Hire document.

8 A. Yes.

9 Q. You quote it incorrectly, do you not?

10 A. I don't know. It's what --

11 Q. You just read the verb "finished" and
12 your report reads "funded"; correct?

13 A. If I look at it, it could be funded.

14 Q. Sir, you just read the document, did
15 you not?

16 A. I did, and I can read it either way, I
17 can see it reads funded or finished, and just
18 like I said, designer looks like design,
19 designing, designer, I read it as best that I
20 could and I --

21 Q. What word did you tell the Court you
22 saw when you read that document just now in your
23 testimony, sir?

24 A. I quoted that it appears to read
25 design. Just now I read it as design, it looks

1 L. Stewart

2 like it has an E at the end, maybe something
3 else, I don't know.

4 Q. What word did you use just in your
5 testimony right now, sir, that followed the word
6 "is" and preceded the word "by"?

7 A. I'm using multiple words.

8 Q. What word did you use when you read it
9 for the first time for the Court in this
10 deposition, sir?

11 A. I don't know.

12 Why don't you tell me what I said
13 because --

14 Q. Sir, it is not my --

15 MR. BOLAND: Objection. You don't need
16 to raise your voice.

17 MR. SNYDER: Excuse me, my voice is not
18 being raised.

19 MR. BOLAND: It is being raised.

20 MR. SNYDER: No, sir, it is not.

21 Q. Sir, I ask the questions, you answer
22 them.

23 Do you understand that?

24 Do you understand that?

25 A. Yes, I understand.

1 L. Stewart

2 Q. Okay.

3 So don't ask me another question,
4 please, okay, because I will not answer them.

5 So what word did you use in your
6 testimony, sir, when I asked you to read this
7 handwritten interlineation?

8 A. I don't know.

9 Q. Well, let's go back and we'll ask the
10 court reporter to remind you.

11 Is it your sworn testimony, sir,
12 sitting here today right now, that you do not
13 recall what word you used when you read the
14 handwritten interlineation?

15 A. What I recall is reading it and then
16 saying that the words are jumbled, that I can't
17 make them out and read to you what it appears to
18 read under magnification, I did that before for
19 my report and I quoted what it appears to read
20 there.

21 My sworn testimony today is that it
22 appears to read what I've got in my report
23 because that's what I read when I had it under
24 magnification.

25 Q. Sir, about three to five minutes ago

1 L. Stewart

2 when I asked you to read this handwritten
3 interlineation, did you tell the Court that the
4 word you read was finished or funded? Which word
5 did you use? Do you recall?

6 A. No, I don't. It could have been either
7 one and I could read both of them right now in
8 the word.

9 Q. So your sworn testimony right now for
10 this court is that you cannot recall in this
11 deposition several minutes ago when you read this
12 handwritten interlineation whether you read the
13 word "finished" or "funded"?

14 Is that your sworn testimony right now,
15 sir, that you cannot recall which word you used
16 when you read it out loud into the record?

17 Do you understand my question, sir?

18 A. I understand your question.

19 Q. Let me withdraw the question and break
20 it down.

21 Do you recall, sir, me handing you this
22 document at the deposition?

23 A. Yes, I do.

24 Q. Do you recall me directing your
25 attention to the handwriting on the document?

1 L. Stewart

2 A. Yes, I do.

3 Q. Do you recall me asking you to read the
4 handwriting out loud?

5 A. Yes.

6 Q. Do you recall reading it out loud?

7 A. Yes.

8 Q. Do you recall, in reading it out loud,
9 that you read and read out loud each word that
10 you saw including indicating for the Court that
11 you saw two sets of initials?

12 A. Yes.

13 Q. Do you recall whether you read out loud
14 the word "finished" or "funded" when you read the
15 handwritten interlineation?

16 A. I believe when I first talked about it
17 I said finished.

18 Q. And what word do you use in your
19 report, sir?

20 A. Funded.

21 Q. Thank you.

22 A. And as I mentioned --

23 Q. There is no question pending right now.

24 MR. BOLAND: Objection. He is
25 continuing to answer the question.

1 L. Stewart

2 A. I'd like to finish my answer.

3 As I mentioned in my testimony, I could
4 read it either way. I did my report based on a
5 microscopic examination and I gave my best read
6 of what it read.

7 Q. When I asked you a few minutes ago
8 whether you remembered whether you used the word
9 "funded" or "finished" and you said you can't
10 recall -- do you remember saying that to me?

11 A. Something like that, yes.

12 Q. Were you lying when you said you
13 couldn't recall it or were you telling the truth?

14 A. I was telling the truth and you were
15 taking my words out of sequence and so I was
16 trying to answer your question.

17 Q. Can you tell the Court how you were
18 telling the truth when you said first that you
19 couldn't recall whether you used the word
20 "finished" or "funded" and then several minutes
21 later recalled that you used the word "finished"
22 when you read the words out loud?

23 A. What I was trying to describe to you
24 and you kept breaking apart was that when I read
25 it initially I told you the words were together,

1 L. Stewart

2 I told you what it appears to read, and then I
3 told you later on in the laboratory I examined it
4 under a microscope and I quoted what it appeared
5 to read there and so we got two different reads
6 based on what I am using my eyes, which are
7 requiring glasses right now, or my microscope in
8 the office.

9 Q. Let's turn your attention back to your
10 report and direct your attention to the paragraph
11 after paragraph Q2, the paragraph that begins
12 "Additional items."

13 Do you see that on page 12?

14 A. Yes.

15 Q. There you write that one of the other
16 items you reviewed is a two-page nonoriginal
17 StreetFax document presented by plaintiff as the
18 smoking gun.

19 Do you see that?

20 A. Yes.

21 Q. Is it your professional expert opinion
22 that the StreetFax document is a smoking gun?

23 A. No. It was presented to me by
24 plaintiff's attorneys as being referred to as the
25 smoking gun document.

1 L. Stewart

2 Q. And do you have an understanding as to
3 why it's being referred to as a smoking gun
4 document?

5 A. I was told that your side indicated
6 that that was the end of the case because it was
7 a smoking gun and that's why I referred to it as
8 that.

9 Q. Right.

10 But do you have an understanding as to
11 why it is a smoking gun that ends the case?

12 A. I would say I have an understanding of
13 what your report indicated, yes.

14 Q. And what is that understanding?

15 A. I believe it revolved around the two
16 pages having different margins, different fonts,
17 different appearances.

18 Q. Do you also understand that the
19 StreetFax contract in fact has different language
20 on the first page than appears on the so-called
21 Work For Hire document?

22 A. Of course it would, yes.

23 Q. Do you understand the StreetFax
24 contract makes no reference to Facebook?

25 A. That's right, it's two different

1 L. Stewart

2 documents.

3 Q. Do you understand that Mr. Ceglia has
4 said under oath in this case in sworn documents
5 that he signed only one contract with
6 Mr. Zuckerberg?

7 A. No, I don't know that.

8 Q. You write that the StreetFax contract
9 document was presented by plaintiff as the
10 smoking gun.

11 What do you mean by presented by
12 plaintiff?

13 A. I received it from our attorneys and it
14 was provided to me as the smoking gun document.

15 Q. Okay.

16 Let's go to paragraph 325 and 326 of
17 your report, which is page 65.

18 Do you see that?

19 A. Yes, sir.

20 Q. You indicate that Mr. LaPorte testified
21 against you in a federal trial and that trial was
22 the 2004 Martha Stewart-Peter Bacanovic trial in
23 the Southern District of New York.

24 Do you see that?

25 A. No, he did not testify against me in

1 L. Stewart

2 that trial. He testified against me in a perjury
3 trial that was brought against me subsequent to
4 that case.

5 Q. You are aware that Mr. LaPorte did not
6 testify in United States versus Martha Stewart?

7 A. Right. That's not what it says there.

8 Q. You didn't intend to create the
9 impression that he testified in the Martha
10 Stewart case; right?

11 A. No. He was not involved in the Martha
12 Stewart case.

13 Q. Sir, throughout your report, for
14 example, in paragraphs 218 and 226, 249, you
15 offer a series of rhetorical questions; am I
16 correct?

17 A. 218 is a question, 224 is a question --
18 I'm sorry, 226 is a question.

19 Q. And you are aware that they are -- I
20 don't need to go through them all.

21 You are aware you asked a series of
22 rhetorical questions throughout your report;
23 correct?

24 A. I am sure that I did, yes.

25 Q. Did you write those questions?

1 L. Stewart

2 A. Yes.

3 Q. And is that what you've done in
4 previous reports rather than rendering a
5 declarative opinion, just posing a rhetorical
6 question? Have you ever done that before in a
7 report?

8 A. I don't recall if I have ever had
9 questions in a report before.

10 Q. You don't answer those questions, do
11 you?

12 A. Yes, I do.

13 Q. Can you direct me to any other forensic
14 laboratory report submitted to a court of law in
15 which you have included rhetorical questions?

16 A. No.

17 Q. Can you point me to any report submitted
18 by any expert to any court at any time that posed
19 rhetorical questions?

20 A. I have to answer that in two parts.
21 First I say no. Secondly, this isn't rhetorical
22 in that I answer the question. I'm simply posing
23 a question and then answering it.

24 Q. Why do you chose in this report for the
25 first time in your career to ask questions of

1 L. Stewart

2 this sort?

3 A. Probably because it's such a long
4 report and I'm trying to make it readable and so
5 I'm posing an issue and then answering it and
6 then going on to the next one.

7 Q. In paragraph 406 you state, sir, that
8 research discloses no reported decision that an
9 opinion concerning the age of ballpoint ink
10 writing on paper -- dot, dot, dot -- satisfies
11 Daubert's scientific reliability standards.

12 Do you see that?

13 A. Yes.

14 Q. And in paragraph 407 you actually cite
15 cases; is that correct?

16 A. That's correct.

17 Q. You are not a lawyer, are you, sir?

18 A. No, sir.

19 Q. You have never had any formal legal
20 training at an accredited law school?

21 A. I've taken law classes from a law
22 school, but I have not had any -- I'm not a
23 lawyer.

24 Q. Do you conduct legal research?

25 A. No.

1 L. Stewart

2 Q. Do you have a Westlaw or Lexis
3 password?

4 A. Yes, a Lexis password.

5 Q. You include a few legal citations,
6 including one to F Supp 2d.

7 Do you see that?

8 A. Yes.

9 Q. What does F Supp 2d stand for, sir?

10 A. I don't know.

11 Q. You cite an Ohio case from 2003.

12 Do you see that, paragraph 407?

13 A. Yes.

14 Q. Is that a state case or a federal case
15 you cited?

16 A. I don't know.

17 Q. You know that this case was filed in
18 federal court in New York; correct?

19 A. Yes.

20 Q. Do you know whether Ohio law applies to
21 this case or not?

22 A. I'm not a lawyer, no.

23 Q. Why did you choose, sir, to cite a case
24 from Ohio in your report?

25 A. Because those are cases that have been

1 L. Stewart

2 involved in previous cases where this issue has
3 come up and those were the citations used there.

4 Q. And do you usually include the results
5 of your purported legal research in a forensic
6 laboratory report of your findings?

7 A. If the purpose of my declaration is to
8 answer questions brought on by opposing experts,
9 yes.

10 Q. In the next paragraph, 408, you quote a
11 legal standard, the Daubert standard; is that
12 right?

13 A. Yes.

14 Q. And in the succeeding paragraphs you
15 proceed to assess the ability of PE testing to
16 satisfy Daubert; is that right?

17 A. I guess you could say it that way.

18 Q. You've never been certified by any
19 court as a legal expert, have you?

20 A. No.

21 Q. You are not qualified to issue expert
22 legal opinions, are you, sir?

23 A. No.

24 Q. Is it your testimony that you have
25 cited legal standards and conducted legal

1 L. Stewart

2 analysis in prior forensic laboratory reports
3 that you've submitted to courts?

4 A. That wasn't my testimony.

5 Q. Have you ever done that before this
6 case?

7 A. In a report, no; in a declaration, I
8 believe so.

9 Q. I'm going to leave a line in the
10 transcript for you to indicate which case, which
11 court you submitted a declaration that contains
12 supposed legal analysis.

13 A. I need to correct you there. I did not
14 say I did legal analysis. I'm referring to
15 quoting the case files that were brought into
16 other courts based on consideration for this 2 PE
17 test.

18 Q. How many reports have you issued during
19 the course of your career as an expert?

20 A. Thousands.

21 Q. Is this the first time out of those
22 thousands that you've ever conducted legal
23 analysis such as is presented in paragraphs 410
24 to 440?

25 MR. BOLAND: Objection. The witness

1 L. Stewart

2 has said twice now he is not doing legal
3 analysis, you keep inserting it in the
4 question, that's improper.

5 MR. SNYDER: That's a speaking
6 objection, which is improper --

7 MR. BOLAND: I am --

8 MR. SNYDER: Excuse me, I am in the
9 middle of speaking, so please don't
10 interrupt me.

11 Under the rules of this court you're
12 not permitted to coach the witness, which is
13 what you just did.

14 MR. BOLAND: No, I did not.

15 MR. SNYDER: Excuse me, I'm not done.
16 When I'm done, you can speak.

17 MR. BOLAND: You were done with that
18 sentence. I didn't coach him.

19 MR. SNYDER: Mr. Boland, if you
20 interrupt me again I will get Judge Foschio
21 on the phone, I will read him the transcript
22 and I will ask him to admonish you.

23 Would you like to do that?

24 MR. BOLAND: Sir, you are asking him
25 leading questions, you are not permitted to

1 L. Stewart

2 do that.

3 MR. SNYDER: Sir, I am permitted under
4 the Federal Rules of Civil Procedure to
5 conduct this deposition as I see fit
6 pursuant to those rules and pursuant to the
7 local rules.

8 You are permitted only to object as to
9 form, as to privilege, and you are not
10 permitted to coach the witness by
11 suggesting --

12 MR. BOLAND: And I objected as to form,
13 precisely what you just said, so you can
14 continue when you want.

15 MR. SNYDER: If you can confine your
16 objection to form, there will be no problem.
17 If you continue to coach the witness we will
18 get the Court on the phone, we will read the
19 questions, we will read your improper
20 coaching to the Court and we will let the
21 Court decide how he wants to deal with the
22 situation.

23 MR. BOLAND: There's no coaching, you
24 are falsely stating what happened.

25 MR. SNYDER: The record speaks for

1 L. Stewart

2 itself.

3 MR. BOLAND: Indeed it does.

4 MR. SNYDER: Please refrain from
5 speaking objections. This witness is very
6 experienced in testimony and does not need
7 your help.

8 BY MR. SNYDER:

9 Q. Sir, during the course of your career
10 and the thousands of reports or more than the
11 thousands of reports that you have submitted have
12 you ever cited Daubert and then purported to
13 assess whether a certain forensic test satisfies
14 Daubert?

15 A. And as I mentioned before, my
16 recollection is I have done that in declarations
17 but not in a simplified laboratory report.

18 Q. So I'm going to leave a blank right
19 there in the transcript for you to indicate which
20 court, which case involved a declaration
21 submitted by you that cited Daubert and then
22 purported to assess whether a certain forensic
23 test satisfies Daubert.

24 We are also going to request that you
25 produce copies of those declarations to us.

1 L. Stewart

2 TO BE FURNISHED: _____

3 _____

4 Q. You don't want to change -- I am going
5 to give you an opportunity now, sir, to reflect
6 on that testimony and is that --

7 A. No change --

8 Q. Is that still your testimony?

9 A. No change is necessary, that's my
10 recollection.

11 Q. Your report contains 470 paragraphs; is
12 that correct?

13 A. I don't think the numbers pertain to
14 paragraphs. I think they were -- in some cases
15 there were multiple paragraphs under one, but it
16 is 470 numbered sections.

17 Q. Am I correct, sir, that the findings in
18 your November 2011 declaration and your June 2012
19 report are very similar?

20 A. I don't know how to answer that. The
21 June report is much more involved, it goes
22 through many of the questions that were left
23 unanswered in the earlier declaration.

24 Q. Can you tell the Court what additional
25 findings you made between your November 2011

1 L. Stewart

2 declaration and your June 2012 submissions?

3 A. We'll have to go through the entire
4 report, we can start doing that. The additional
5 findings in a nutshell are the responses based on
6 the 500 or so pages of expert reports from your
7 side.

8 Q. Can you tell the Court with specificity
9 what additional findings you made in the report
10 that were not contained in your declaration?

11 A. We can start doing that, yes.

12 Q. Let me withdraw the question and ask --
13 I can save some time.

14 You do in your report, but not in your
15 declaration, talk about Walter Rantanen's
16 findings; correct?

17 A. Yes.

18 Q. Those are not your findings, those are
19 findings that he made on which you rely; correct?

20 A. Yes.

21 Q. When you reviewed the expert report of
22 Mr. LaPorte am I correct that you did not, after
23 reviewing his report, test the toner again?

24 A. That's correct, I did not test it
25 again.

1 L. Stewart

2 Q. And you didn't test any of the ink
3 again, did you not, to see if you could
4 differentiate any of the inks?

5 A. I can't say, again, because I never
6 tested the ink chemically.

7 Q. And you didn't test the opacity of the
8 paper, correct, after reviewing Mr. LaPorte's
9 report?

10 A. No, I did not.

11 Q. You didn't observe it under short-,
12 mid- or long-wave ultraviolet; correct?

13 A. I don't have the documents, I can't do
14 that again.

15 Q. Well, you said you don't have the
16 documents, but you understand that your client
17 Mr. Ceglia and/or his counsel had the documents;
18 correct?

19 A. Right. I did not request to see them
20 again.

21 Q. You could have requested to see them
22 again, could you have not?

23 A. I chose not to.

24 Q. And you also chose not to look at the
25 ink, after Mr. LaPorte submitted his findings,

1 L. Stewart

2 with a stereo microscope; correct?

3 A. I did not look at the ink with a stereo
4 microscope after Mr. LaPorte issued his findings,
5 correct.

6 Q. And when you reviewed the expert report
7 of Mr. Lesnevich you did not go back and review
8 the interlineation again on the original document;
9 correct?

10 A. No, I believe that's incorrect. I
11 reviewed the scanned images based on Lesnevich
12 and Romano and then that led to what's in my
13 report.

14 Q. You didn't perform any overlays with
15 the interlineations from different scans to test
16 his conclusions, did you?

17 A. The only overlays are based on
18 indentations. If that's what you are referring
19 to, I did not do that again, no.

20 Q. And after reviewing Mr. Lesnevich's
21 report, you also didn't view the line quality of
22 the interlineation under a stereo microscope;
23 correct?

24 A. No, that's incorrect.

25 Again, I looked at the scanned images

1 L. Stewart

2 that were taken from those under -- after
3 Mr. Lesnevich's report.

4 Q. Under a stereo microscope?

5 A. No. Again, you would have to have the
6 original document for that.

7 Q. And Mr. Argentieri has access to that
8 in the safe-deposit box, correct?

9 A. Correct, but I did not need that at
10 that point, so I did review it or ask to see it
11 again.

12 Q. And you didn't go back to the document
13 to test any of Mr. Tytell's conclusions either,
14 did you?

15 A. I went back to scanned images. I did
16 not need to go back to the document.

17 Q. Or Dr. Lyter's, you didn't go back to
18 the document to test his findings either, did
19 you, after reviewing his report?

20 A. No. It would have been a waste of
21 time, there was no reason for me to go back to
22 the document.

23 Q. Did Mr. Blanco review your report
24 before you signed and submitted it to the Court?

25 A. Yes.

1 L. Stewart

2 Q. You say he did a peer review of your
3 report; correct?

4 A. Correct.

5 Q. That's the phrase you used, peer
6 review; correct?

7 A. Correct.

8 Q. And when did he conduct this so-called
9 peer review?

10 A. I believe it was around the last week
11 before I submitted it.

12 Q. Did he suggest any changes?

13 A. My recollection is he suggested
14 placement changes but nothing material.

15 Q. Nothing substantive?

16 A. No.

17 Q. Before I get back to the so-called peer
18 review I just want to ask you a couple of
19 questions.

20 When were you first contacted to be
21 involved in this case for Mr. Ceglia?

22 A. I have submitted it to you, but I
23 believe the first e-mail from Mr. Argentieri was
24 in June of 2011.

25 Q. When were you retained?

1 L. Stewart

2 A. It would have been at that time.

3 Q. It's your testimony you were retained
4 in June 2011?

5 A. I don't have the first e-mail in my
6 report here. I have submitted it to you. That
7 would be my first connection with Mr. Argentieri.

8 In that e-mail he indicates that I'm
9 being retained, if my recollection is correct.

10 Q. Do you have a written retainer
11 agreement with Mr. Argentieri or his client?

12 A. No, I do not.

13 Q. Who was contacted first, you or
14 Mr. Blanco, do you know?

15 A. I was.

16 Q. And then did you recommend Mr. Blanco
17 for the case?

18 A. Yes, I did.

19 Q. Are there areas in which you aren't
20 specialized in which Mr. Blanco does not and vice
21 versa?

22 A. That's a tough question to answer. We
23 both have different areas that we are probably
24 better in than the other and I suggested him as a
25 person that could assist in this case.

1 L. Stewart

2 Q. For what purpose did you recommend him
3 specifically?

4 A. The handwriting and also the staple
5 issue I thought he would be good at.

6 Q. And how much -- what are the financial
7 terms of your retention with the plaintiff?

8 A. Hourly rate, I believe it's \$350 an
9 hour for casework and \$450 an hour for
10 depositions, trial.

11 Q. Is there a contingency fee component to
12 your retention?

13 A. No.

14 Q. Have you received any payment for your
15 services?

16 A. Yes.

17 Q. Who's written the checks to you?

18 A. Mr. Argentieri has written some and
19 some came from Mr. Dumain's office.

20 Q. Did Mr. Ceglia write any of the checks
21 directly to you?

22 A. No.

23 Q. And have you rendered invoices?

24 A. Yes.

25 Q. And who do you send the invoices to?

1 L. Stewart

2 A. In the beginning they went to
3 Mr. Argentieri, later on they went to Mr. Lake,
4 then they went to Mr. Dumain and now they go to
5 Mr. Boland.

6 Q. And is there any bonus or incentive
7 compensation involved in your retention?

8 A. No.

9 There's a penalty clause if it's not
10 paid within 30 days.

11 Q. And in your report you talk about being
12 engaged to oversee the forensic examinations on
13 the part of plaintiff's experts; is that correct?

14 A. Correct.

15 Q. Did you oversee Dr. Aginsky's
16 examinations?

17 A. After the fact, yes.

18 Q. After what fact?

19 A. He was brought into the investigation
20 earlier on, so I was -- I looked at his report or
21 looked at his, I don't remember if it was a
22 report or e-mails that he sent, something that
23 had his findings on it, so I did review that
24 early on.

25 Q. Did Mr. Argentieri ever tell you that

1 L. Stewart

2 he contacted Mr. LaPorte to work for the
3 plaintiff at any time?

4 A. No, he did not.

5 Q. Were you aware before -- are you aware
6 that Mr. LaPorte was contacted by the plaintiff's
7 lawyers to work for the plaintiff?

8 A. No, I'm not.

9 Q. Are you aware when Dr. Aginsky and
10 Mr. Osborn stopped being part of plaintiffs'
11 team?

12 A. I am not aware that they have stopped.

13 Q. When was the last time you spoke with
14 them?

15 A. As I believe I testified earlier, I
16 talked to Mr. Aginsky very early on, it would
17 have been approximately June of 2011, and I don't
18 believe I've talked to him since then.

19 Q. Why not?

20 A. Because there was no need for me to
21 talk to him about this case since then.

22 Q. Is it your sworn testimony that no one
23 has said anything to you one way or the other
24 about whether those two individuals remain
25 plaintiff's experts on this date one way or

1 L. Stewart

2 another?

3 A. That's correct, that's my testimony.

4 Q. What about Eric Speckin, have you ever
5 spoken with him about this case?

6 A. Yes.

7 Q. In fact, he examined the original
8 so-called Work For Hire document with you in July
9 of 2011; correct?

10 A. Yes.

11 Q. And do you know why he didn't provide a
12 report?

13 A. No. That's between him and Mr. Boland
14 and Mr. Argentieri.

15 Q. You never spoke to Mr. Speckin about
16 that?

17 A. Why he did not issue a report, no.

18 Q. You both took samples from the
19 documents; correct?

20 A. Yes.

21 Q. Did he take samples of paper?

22 A. I don't recall if he took samples of
23 paper.

24 Q. Did he take samples of ink?

25 A. I believe he did, yes.

1 L. Stewart

2 Q. Did he take samples of attorney?

3 A. I don't recall.

4 Q. Are you aware of whether he ran any
5 tests on these samples?

6 A. Yes, he did tests on the samples.

7 Q. Did he test the paper?

8 A. I don't know.

9 Q. Did he test the toner?

10 A. I don't know.

11 Q. Did he test the ink?

12 A. I believe so.

13 Q. What kind of test did he subject the
14 ink to?

15 A. I don't know all of the tests that he
16 conducted. I know he tried to identify the ink.

17 Q. Do you know what his results of his
18 examination were?

19 A. It would be best to come from him, but
20 I believe that his results from our phone calls
21 were that it was deteriorated to the point that
22 he could not identify it.

23 Q. And do you know why he did not issue a
24 written report to that effect?

25 A. No, I do not.

1 L. Stewart

2 Q. But your task was overseeing the
3 plaintiff's examinations; correct?

4 A. That's correct.

5 Q. But you're not aware of what tests he
6 conducted or not; right?

7 A. As I mentioned, he conducted the tests
8 on the ink to see if he could identify it.

9 Q. But you weren't sure what other tests
10 he conducted?

11 A. If I can answer that, I will explain
12 why.

13 When you conduct an ink analysis where
14 you are trying to do an identification, many
15 times you have to do exams on the paper as well,
16 so when you ask the question did he examine the
17 paper, I can't answer that other than to assume
18 that he did when he did the identification of the
19 ink.

20 Q. As the person tasked with overseeing
21 the plaintiff's examinations didn't you
22 coordinate which tests he would be running and
23 which he wouldn't?

24 A. Yes. I asked him to identify the ink.

25 Q. And did you get the samples he took

1 L. Stewart

2 back?

3 A. No.

4 Q. Does he still have them?

5 A. I don't know.

6 Q. Let's go back to this concept of peer
7 review.

8 At paragraph 447 you state toward the
9 end of your report that as part of your original
10 tasking on this case you conducted what you call
11 technical review of the work conducted by
12 Mr. Blanco; is that correct?

13 A. Correct.

14 Q. And you reviewed his declaration along
15 with the supporting exhibits?

16 A. Yes.

17 Q. And you peer-reviewed Mr. Blanco's
18 declaration before or after it was executed?

19 A. Before.

20 Q. Did Mr. Blanco himself provide you with
21 the declaration and its exhibits or did someone
22 else?

23 A. No. Mr. Blanco did.

24 Q. So it's your statement here today under
25 oath that you received Mr. Blanco's declaration

1 L. Stewart

2 and exhibits and reviewed them before it was
3 submitted?

4 A. That's correct.

5 Q. So if Mr. Boland represented that
6 neither he nor Mr. Blanco had sent Mr. Blanco's
7 declaration and exhibits to anyone, to any
8 person, that wouldn't be true; correct?

9 A. Well, I don't know what you mean by
10 sent. I reviewed it electronically, I did not
11 review a hard copy.

12 Q. Who sent it to you electronically?

13 A. Mr. Blanco.

14 Q. And that was before he submitted it to
15 the Court; correct?

16 A. Correct.

17 Q. Did you provide Mr. Blanco with
18 comments or feedback?

19 A. Yes, I did.

20 Q. How did you provide that?

21 A. By telephone.

22 Q. Now, am I correct that your specialty
23 is in the chemistry aspects of document
24 examination?

25 A. That's one of my specialties, yes.

1 L. Stewart

2 Q. Do you consider Mr. Blanco to have
3 expertise in that specific discipline gained
4 through his training and experience?

5 A. Chemical analysis of documents, no.

6 Q. His specialty is in handwriting and
7 handwriting identification; correct?

8 A. Among others.

9 Q. Do you consider yourself to have
10 expertise in that specific discipline, that is
11 handwriting and handwriting identification gained
12 through documented training and experience?

13 A. Yes.

14 Q. With whom did you do your two-year
15 apprenticeship in handwriting as required
16 specifically for that discipline?

17 A. There was never a two-year training in
18 handwriting, there was a two-year training in
19 document examination, and it included all aspects,
20 that was done between 1982 and 1984 for me.

21 Q. When was the last time you were
22 certified as an expert in handwriting analysis?

23 A. I have never been certified as an
24 expert in solely handwriting analysis. I have
25 been certified as an expert in examination of

1 L. Stewart

2 questioned documents by the Secret Service and I
3 have been proficiency tested in handwriting
4 analysis by outside proficiency groups as
5 recently as last October.

6 Q. So no court has ever admitted you as an
7 expert to provide handwriting identification
8 analysis; correct?

9 A. No, that's not true.

10 Q. What court has done that?

11 A. A few courts have done that. I don't
12 have that information in front of me.

13 Q. For actual handwriting identification
14 analysis?

15 A. Yes.

16 Q. I'll leave a blank in the transcript
17 for you to provide that information.

18 TO BE FURNISHED: _____

19 _____

20 MR. SNYDER: Let's take a five-minute
21 break. I think we have been going, and the
22 tape is about an hour and 10 minutes or so.

23 Let's just take a five-minute bathroom
24 break.

25 THE VIDEOGRAPHER: Going off the

1 L. Stewart

2 record. The time is 11:01. This ends tape
3 number 1.

4 (Recess taken.)

5 THE VIDEOGRAPHER: We are back on the
6 record. The time is 11:25. This is tape
7 number 2.

8 MR. SNYDER: I'm going to mark as
9 Exhibit 15 a printout that we just made off
10 of the Internet during the break.

11 (Defendants' Exhibit 15, two-page
12 printout from Internet of blancostewart.com
13 Web site, marked for identification, as of
14 this date.)

15 BY MR. SNYDER:

16 Q. Do you see that?

17 A. Yes, I do.

18 Q. What is this?

19 A. This is what you were referring to
20 before, it's a test that Blanco and I did to make
21 a Web page and advertise our new D.C. office.

22 Q. Are you aware that this remains visible
23 and searchable on the Internet today?

24 A. I'm sure it does. Everything stays on
25 the Web.

1 L. Stewart

2 Q. Well, are you aware that this is an
3 active Web site, www.blancostewart.com?

4 A. I am not aware that it's active. I
5 haven't paid to keep it up, so I don't know what
6 the status is of it.

7 Q. And can you read what is written under
8 the word "Home"?

9 A. "Blanco and Stewart have joined forces
10 to provide even more comprehensive forensic
11 document examination services."

12 Q. Is that a true statement?

13 A. We joined an office together in D.C.,
14 yes.

15 Q. Is this a true statement?

16 A. It's a true statement that we joined
17 together, we got an office together. We have
18 never shared resources, we have never shared a
19 case as far as financially and we are not on each
20 other's payroll.

21 Q. Is there anything inaccurate about this
22 statement that is present on the Web site
23 blancostewart.com?

24 A. You are showing me one page.

25 As far as that one sentence goes, no,

1 L. Stewart

2 that was accurate at the time.

3 I would personally take the Web page
4 down if I knew that I could do that.

5 Q. Have you personally taken any steps to
6 learn if you could take the page down?

7 A. I don't know if it is still up.

8 Q. I am representing to you that we just
9 printed this out at 11:15 a.m.

10 A. And as you asked me before to believe
11 in me, I guess I will believe in you.

12 You know, whether it's on the Web or
13 not is different than whether it's accurate or
14 not.

15 Q. I'm not going to ask you to believe me.
16 Can you please look at the date stamp
17 on the bottom of this page?

18 A. I see the date stamp. As you are aware
19 from computer forensics, date stamps mean
20 nothing, but --

21 Q. Date stamps mean nothing?

22 A. Yes.

23 Q. Is it your testimony that this date
24 stamp here means nothing?

25 A. My testimony is that date stamps on

1 L. Stewart

2 computers can be manipulated.

3 Q. Do you have any basis to believe that
4 the date stamp on this document was manipulated
5 this morning?

6 A. No. You asked me to believe you, so
7 I'm believing you.

8 Q. I'm not asking you to believe me.
9 Look at this document, and what does
10 the document say?

11 A. It has typed at the bottom
12 <http://www.blancostewart.com>, and it has the date
13 7/11/2012 11:15:03 a.m.

14 Q. And what steps, if any, have you taken,
15 sir, to remove the Blanco & Stewart Web site from
16 the Internet?

17 A. I haven't taken any to remove it and I
18 haven't taken any to initiate it. It's not my
19 Web page.

20 Q. You are Mr. Stewart, are you not?

21 A. Yes, it is, and as I mentioned before,
22 Mr. Blanco and I created an initial Web page to
23 advertise our D.C. office and that's what this
24 was for. I have not paid for it, I don't know
25 what the status is of it and I have not gotten

1 L. Stewart

2 any business from this advertisement.

3 Q. Am I correct, sir, that you have not
4 taken any specialized courses in your area of
5 expertise for 12 years?

6 A. No.

7 Q. Let me show you what we'll mark as
8 Exhibit 16.

9 Before I mark it, you submitted a copy
10 of your resume or CV to us, did you not?

11 A. That's correct.

12 Q. And that was complete and accurate?

13 A. At the time it was.

14 (Defendants' Exhibit 16, curriculum
15 vitae of Larry F. Stewart, marked for
16 identification, as of this date.)

17 Q. Here you go, 16.

18 Do you recognize this to be your CV?

19 A. It appears to be, yes.

20 Q. And do you see where you list
21 specialized courses?

22 A. Yes.

23 Q. And do you see that you don't have any
24 listed since 2000?

25 A. That's right, I do not have them listed

1 L. Stewart

2 on this document since 2000.

3 Q. So can you tell the Court why you
4 omitted any courses that you've taken in the past
5 12 years?

6 A. This document would be voluminous if I
7 had everything listed.

8 I have included in there all of the
9 course work that was pertinent to me getting
10 certified and getting my expertise. Since then
11 I've done continuing education, I've done a
12 number of things that are not listed on there.

13 Q. What was your security clearance with
14 the United States Secret Service?

15 A. It was -- it varied through the years,
16 it was a few steps above top secret.

17 Q. And you retired in 2005; is that
18 correct?

19 A. Yes.

20 Q. And that was after your 2004 perjury
21 trial; correct?

22 A. 2005 is after 2004, correct.

23 Q. Do you think that I asked you whether
24 2005 was after 2004?

25 A. I believe so, because the two were two

1 L. Stewart

2 separate events, but yes.

3 MR. SNYDER: Can you please read back
4 the last question.

5 Q. Because that wasn't my question. I
6 want to make sure you answer my question.

7 (Record read.)

8 Q. You answered 2005 is after 2004.

9 A. Correct, it is.

10 Q. You retired from the Secret Service
11 after you were indicted and tried for perjury;
12 correct?

13 A. And found not guilty, yes.

14 Q. You were acquitted; correct?

15 A. I was found not guilty and that's also
16 called acquittal.

17 Q. You left the Secret Service because you
18 had a mutual a disagreement with the Secret
19 Service about the way they handled the Martha
20 Stewart matter; is that correct?

21 A. That's largely it, yes.

22 Q. And you also were accused of sexual
23 harassment of a Secret Service employee; correct?

24 A. By the same person that shown to have
25 lied in the Martha Stewart case, yes, and that

1 L. Stewart

2 accusation was shown to be a lie and she was
3 actually reprimanded for that.

4 Q. And you were accused to have kissed
5 her; correct?

6 A. Right, which was all retracted and she
7 was reprimanded.

8 Q. She was shown to have lied.

9 Did the jury in the trial against you
10 make a finding that she lied?

11 A. No. I am basing it on the evidence
12 that was presented at the trial.

13 Q. So your opinion is she was shown to
14 have lied?

15 A. I know she was shown to have lied
16 because I was there when she was retracted and I
17 was there when she was reprimanded and I was
18 part of her year-long reprimand.

19 Q. And did you lose your security
20 clearance before you retired, sir?

21 A. Of course, that has to be removed when
22 you are retired.

23 Q. Before you retired -- I didn't ask your
24 retirement -- did you lose your security
25 clearance?

1 L. Stewart

2 A. No. It would have happened at the same
3 date that I retired.

4 Q. Are you sure?

5 A. Yes.

6 Q. Are you aware that a federal employee
7 security clearance is immediately removed if that
8 employee is arrested for a federal crime related
9 to his or her employment?

10 A. No, I'm not aware of that.

11 Q. Is it your sworn testimony that after
12 you were arrested on the criminal complaint filed
13 by David Essex and Steve Pekin and signed by
14 David Kelly that you continued to enjoy a
15 security clearance?

16 A. I don't know that I enjoyed it. It's
17 my understanding that the security clearance was
18 maintained until I retired in June of 2005.

19 Q. And you didn't conduct any casework or
20 review any reports during the pendency of those
21 charges; correct?

22 A. No. I never went back into the office
23 after the accusation.

24 Q. Now let's talk a moment about your
25 publications and presentations.

1 L. Stewart

2 Let's talk about the prestigious
3 journals and organizations where you published or
4 presented prior to 2004.

5 For instance, you had presented
6 articles a couple of times at the American
7 Academy of Forensic Science meetings; correct?

8 A. Yes.

9 Q. And you presented to another esteemed
10 professional organization, the Mid-Atlantic
11 Association of Forensic Scientists; correct?

12 A. Yes, I have.

13 Q. You haven't presented to the American
14 Academy of Forensic Sciences since 1996; correct?

15 A. That appears to be correct, yes.

16 Q. And you haven't presented to the
17 Mid-Atlantic Association of Forensic Scientists
18 since 1991, 21 years ago; correct?

19 A. No. I believe there was one in 1993,
20 according to this.

21 Q. Okay.

22 Since 1993, 19 years ago; correct?

23 A. I believe that was the last time, yes.

24 Q. And you previously presented to the
25 American Society of Questioned Document Examiners;

1 L. Stewart

2 correct?

3 A. Yes.

4 Q. And you haven't presented to them in a
5 decade; correct?

6 A. Yes.

7 Q. And you also published in the Journal
8 of Forensic Scientists in the 1980s and early
9 1990s; correct?

10 A. It's called the Journal of Forensic
11 Sciences, plural, and the last publication with
12 them appears to be 1992.

13 Q. And am I correct, sir, that you say
14 that you are a fellow of the American Academy of
15 Forensic Sciences right now?

16 A. Yes.

17 Q. And you've been a member since 1982?

18 A. I don't know.

19 Q. When was the last time you attended an
20 annual meeting of the American Academy of
21 Forensic Sciences?

22 A. I don't know.

23 Q. Do you receive their newsletter?

24 A. Yes.

25 Q. Are you aware that the American Academy

1 L. Stewart

2 of Forensic Sciences ethics committee in 2008
3 found clear and convincing evidence that
4 Mr. Blanco submitted an erroneous and misleading
5 report and violated the code of ethics by
6 knowingly misrepresenting data?

7 A. I'm aware that they brought that
8 forward and it was vacated.

9 Q. Are you aware that after the ethics
10 committee made this finding it recommended to the
11 board of directors that he be expelled from the
12 academy?

13 A. I'm aware of that and then it was
14 vacated.

15 Q. Are you aware that in September of 2008
16 the board of directors unanimously accepted the
17 recommendation of the ethics committee and
18 expelled your office mate Mr. Blanco?

19 A. He's not my office mate and I'm aware
20 that they made that accusation, they came to that
21 decision, he was not present, and it's been
22 vacated since then.

23 Q. Are you aware that Mr. Blanco appealed
24 his expulsion to the entire membership?

25 A. I believe that he did, yes.

1 L. Stewart

2 Q. And are you aware that his expulsion
3 was not reversed by the entire membership when
4 that was brought to it?

5 A. Until such point as it was vacated.

6 Q. Did you attend the meeting in Denver,
7 Colorado in February of 2009 when Mr. Blanco's
8 expulsion was taken up by the academy at its
9 annual business meeting?

10 A. No, I did not.

11 Q. Did you vote one way or another?

12 A. No, I did not.

13 Q. And the membership didn't overrule his
14 expulsion; correct?

15 A. Until he was vacated.

16 I don't understand your question. It
17 was vacated.

18 Q. Do you recall that Mr. Blanco sued the
19 academy?

20 A. Yes.

21 Q. And do you recall that the settlement
22 agreement that he signed provided that they would
23 vacate the expulsion, but that he would resign
24 and never apply for membership again?

25 A. I believe that was the terms, yes.

1 L. Stewart

2 Q. And while the expulsion was vacated,
3 are you aware that the ethics committee finding
4 was not vacated?

5 A. No, I am not aware of that.

6 Q. Do you have any basis, sir, to render
7 an opinion one way or another as to whether
8 Mr. Blanco violated the academy's code of ethics
9 by submitting an erroneous and misleading report
10 to be used in the judicial process?

11 A. I am not involved in that matter, so
12 I'm not in a position to discuss it.

13 Q. So you have no information one way or
14 another as to whether he did or didn't submit an
15 erroneous and misleading report?

16 A. Only the fact that they vacated it and
17 that's enough for me.

18 Q. But you conducted no examination of the
19 facts and circumstances to determine whether the
20 ethics committee finding was accurate?

21 A. It would not have been proper for me to
22 do that, no.

23 Q. Did you ever ask Mr. Blanco about it?

24 A. We've discussed it.

25 Q. And what did he say?

1 L. Stewart

2 A. That he was in the right and that he
3 was happy that they vacated it.

4 Q. When deciding to recommend Mr. Blanco
5 to the attorneys for Mr. Ceglia did you take into
6 account that an organization that is highly
7 reputable ethics committee found that Mr. Blanco
8 knowingly misrepresented data?

9 A. And then reversed it.

10 It was a wash to me, so, no, I did not
11 take that into account.

12 Q. What is the American College of
13 Forensic Examiners?

14 A. It's believed to be the largest
15 forensic organization in the world right now, it
16 has over 20,000 members.

17 Q. And you say in your achievement section
18 of your resume that you are a certified forensic
19 consultant; is that right?

20 A. That's correct.

21 Q. Did you have to take an exam to be a
22 member of that college?

23 A. To be a member, no. To be certified,
24 yes.

25 Q. And are you aware, sir, of an

1 L. Stewart

2 article -- I'm sure you've been shown this in
3 prior depositions -- how a graduate student with
4 no background in forensics became certified as a
5 forensics consultant by just paying \$495 and
6 registering online and taking 90 minutes of video
7 instruction and answering a hundred multiple
8 choice questions?

9 You know what I'm talking about; right?

10 A. Yes. It comes up in every deposition
11 that Mr. LaPorte's on the other side of and it
12 follows with a document that was produced by the
13 American college by their legal team answering
14 that question. I brought it with me, if you'd
15 like to see it.

16 Q. I have the article.

17 You think Mr. LaPorte is responsible
18 for the question I just asked you?

19 A. It comes up every time he's on the
20 other side, yes.

21 Q. So this question is present, appears in
22 prior deposition transcripts?

23 A. Yes.

24 Q. So anyone who had a deposition
25 transcript for a prior case where Mr. LaPorte was

1 L. Stewart

2 on the other side would see this question;
3 correct?

4 A. That would be the hard way to do it.
5 Since you've hired him, I assume you got it done
6 the easy way.

7 Q. Do you have a personal animus towards
8 Mr. LaPorte?

9 A. I don't really know him as a person, so
10 I would say no.

11 Q. Is it your sworn testimony that you
12 have no negative feelings toward Mr. LaPorte?

13 A. That's not my testimony. I do not -- I
14 didn't say that.

15 Q. Well, what feelings do you have about
16 Mr. LaPorte?

17 A. I meant personally.

18 As far as business related I believe
19 that he has shown not to be trustworthy, he's
20 shown that he changes his mind, he testifies one
21 way and then a different way, depending upon
22 which side of a case he's on, and I picture him
23 as a person who just wants to win a case as
24 opposed to do what's morally correct.

25 Q. He's still a member of the United

1 L. Stewart

2 States Secret Service, is he not?

3 A. No, he's not, he doesn't work for the
4 United States Secret Service anymore.

5 Q. United States Department of Justice?

6 A. Yes.

7 Q. Are you aware that a cat, feline
8 animal, house cat became certified by this
9 organization that you have said is the largest
10 organization of forensic examiners in the world?

11 A. Yes. I'm aware early on in the
12 organization that somebody misrepresented
13 themselves, filled out a false application and
14 applied for membership and that also's been
15 addressed by the organization and it was in the
16 early years, nothing like that's ever happened
17 since then.

18 Q. You know that for a fact?

19 A. I actually queried them after the last
20 time Mr. LaPorte brought this up and I received
21 documents from their legal team that I told you I
22 would give you if you wanted.

23 Q. Sir, you're certainly aware that the
24 American Bar Association Journal among many
25 others has criticized the ACFE as a certification

1 L. Stewart

2 mill? You know that; right?

3 A. I know they did that early on. In the
4 organization now, in the past number of years
5 that's not been the accusation.

6 Q. Are you aware that in April 2012
7 articles appeared criticizing this so-called
8 college of forensic examiners as a mill?

9 A. I am not aware of an article in 2012.

10 Q. So you are proud to be a member of this
11 organization?

12 A. I would say I'm proud to be a member of
13 an organization because I believe that the
14 organization is built on its people and if
15 they've got good people they become a good
16 organization.

17 I'm aware of other organizations that
18 haven't gotten that type of press that you are
19 referring to and they have very bad people
20 working under those organizations in some cases,
21 so it's not the organization, it's the people
22 within them.

23 Q. And what's the academy?

24 A. Oh, my board of directors?

25 That was an organization that had the

1 L. Stewart

2 idea of creating a school for private
3 investigators and it has, it's still in the
4 creation stage, it has never taken off.

5 Q. And just to be clear, you are not
6 intending to mislead anyone into thinking that
7 you are on the board of directors of the American
8 Academy of the Forensic Sciences?

9 A. No. If I was, I would say that there.
10 It says the academy.

11 Q. Right.

12 And have you ever been to the office or
13 physical headquarters of the academy?

14 A. Yes, I have.

15 Q. When was your last board meeting?

16 A. It's been a couple of years. They
17 pretty much are trying to regroup at this point,
18 they are almost broke.

19 Q. Who are the members of the board right
20 now?

21 A. Bill Copeland is the head of the board.

22 As far as active members, I don't know.

23 I know that they were in a situation where some
24 people weren't going to be involved with it
25 anymore, so I don't know who is active anymore.

1 L. Stewart

2 Q. So the academy hasn't started any
3 classes yet, to your knowledge?

4 A. I believe they had a few a few years
5 back, but they haven't had any recently. They
6 still are trying to create books and create the
7 academy and sell the idea.

8 Q. I saw on the books portion of the
9 academy's Web site that they include your books
10 "Document Examination" and "Identity Theft" in
11 their list of proprietary textbooks.

12 A. Yes, sir.

13 Q. And are those the same books you list
14 on your resume as published by A-Z Publishing?

15 A. Yes, they are.

16 Q. If I wanted to buy your books, could I
17 buy them on amazon.com?

18 A. I don't know. I doubt it.

19 Q. Would it surprise you to learn that
20 they are not available on amazon.com?

21 A. No.

22 Q. Would it surprise you to learn that
23 they can't be found and purchased by searching
24 Google for the books?

25 A. It's my understanding they are

1 L. Stewart

2 available through the academy and I know that I
3 have them available and I have sold them myself
4 before, but I don't believe it's on any Web site
5 like Google or -- it's not being advertised that
6 way.

7 Q. Are you aware the books are not in the
8 Library of Congress?

9 A. Well, they have a number. They should
10 be in the Library of Congress.

11 Q. Are you aware that A-Z Literary Book
12 Publisher's registration is no longer active?

13 A. No, I am not aware of that.

14 Q. Would it surprise you to learn that we
15 tried to contact A-Z Literary Book Publishing's
16 principal and could not find a working phone
17 number?

18 A. That would not surprise me. They
19 published in 2009, this is 2012.

20 Q. Are you aware that the academy doesn't
21 even have a link that allows you to purchase the
22 books on their Web site?

23 A. No, I'm not aware of that.

24 Q. So where can I get these books other
25 than from you?

1 L. Stewart

2 A. It is my understanding the academy or
3 myself.

4 Q. How would I contact the academy if I
5 wanted to?

6 A. I assume you would go to their Web site
7 and contact Bill Copeland, I assume it is still
8 active.

9 Q. Are you aware -- would it surprise you
10 to learn that the academy's Web site lists a
11 number and if you call that number you get a cell
12 phone of a man who has nothing to do with the
13 academy?

14 A. Your question is would it surprise me?

15 Q. Yes.

16 A. I don't know if that's the case or not.

17 Q. Why do you think that would be the
18 case?

19 A. Maybe they've changed phone numbers. I
20 don't know.

21 Q. Is the academy a real business?

22 A. It was when I was there. I don't know
23 what the status is right now.

24 Q. So assuming you can't get the books
25 from the academy because apparently it's closed

1 L. Stewart

2 for business, is it a fact that you can only get
3 the books from you?

4 A. No. I can give you Mr. Copeland's
5 phone number, if you'd like, and I'm not sure
6 that the academy is defunct; it's my understanding
7 it's still in business.

8 Q. Can you give us Mr. Copeland's phone
9 number, please.

10 A. Yes, I can provide it to you. If you
11 want to give me a blank, I can fill it in.

12 TO BE FURNISHED: _____
13 _____.

14 Q. Have you published a single scientific
15 article in a single academic journal since 2004?

16 A. Yes.

17 Q. Tell us what you've published, what
18 scientific article you have published in an
19 academic journal.

20 A. I don't know what you are referring to
21 as an academic journal.

22 I have published "Forensic Science -
23 Fake Fingerprints" in the Forensic Expert Witness
24 Association, I published -- that was in 2007.

25 I published "Leveling the Playing

1 L. Stewart

2 Field" --

3 Q. Sir, my question was an academic
4 journal, not an online publication in an experts'
5 directory.

6 A. Academic journal is kind of an
7 oxymoron, I don't know what you mean by that.

8 Q. You don't know what I mean by academic
9 journal?

10 What would you regard as an academic
11 journal?

12 A. A peer-reviewed publication that has
13 our peers in it and all of these that I am
14 mentioning are those.

15 Q. Is it your testimony that the online
16 publication where you published "Forensic Science
17 - Fake Fingerprints" is a peer-reviewed academic
18 journal?

19 A. Yes, of course it is.

20 Q. All right.

21 Now let's go to the Martha Stewart case.
22 Did you get in any trouble at all for
23 your testimony in the Martha Stewart case?

24 A. That was asked in a previous LaPorte
25 trial.

1 L. Stewart

2 It depends on what you refer to as
3 trouble. I was accused of something I did not
4 do, so if you call that trouble, then yes.

5 (Defendants' Exhibit 17, excerpt from
6 trial transcript in Vanderbilt Mortgage
7 case, marked for identification, as of this
8 date.)

9 Q. Let me hand you what we will mark as
10 Exhibit 17.

11 The first page of this has the trial
12 caption for the Vanderbilt Mortgage case; correct?

13 A. That's correct.

14 Q. And it has the date November 15, 2010;
15 correct?

16 A. That's correct.

17 Q. And that was the day you testified in
18 that case; correct?

19 A. I don't know, I'd have to refer to my
20 testimony list.

21 Q. So this is a copy of your trial
22 transcript, or it appears to be, does it not?

23 A. I assume my transcript is quite a bit
24 longer than that, but it's a few pages of it.

25 Q. All right.

1 L. Stewart

2 Let me direct your attention to page
3 291 and ask you to please read out loud the
4 question at line 18 and your answer at line 20.

5 A. "And isn't it true that your testimony
6 in the Martha Stewart trial got you in trouble;
7 correct?"

8 And my answer was "No, I would not say
9 that."

10 Q. So were you telling the truth on line
11 20 when you testified "No, I would not say that"?

12 A. Of course I am, and it's what I just
13 mentioned to you, it depends on what you call
14 trouble.

15 I was accused of something I did not do
16 and, again, this was another LaPorte trial and he
17 brought this out and we talked about it and
18 discussed it.

19 Q. And the fact is, after you testified
20 that you hadn't gotten into trouble in the
21 Vanderbilt case, the United States district judge
22 admonished you in open court, did she not?

23 A. She made a statement in open court
24 which we then responded to and cleared everything
25 up.

1 L. Stewart

2 Q. In fact, you recanted your testimony
3 the next day claiming that you hadn't understood
4 the question; isn't that right?

5 A. I don't know exactly what I said. I
6 repeated what I just told you, which is I was
7 accused of something and I was wrongly accused.
8 I don't consider that getting in trouble, I
9 consider that being accused of something and
10 showing that it wasn't accurate.

11 Q. Now, in the Martha Stewart case you
12 were a witness for the Government; correct?

13 A. Yes.

14 Q. And that's when you were the lab
15 director at the Secret Service; correct?

16 A. And chief forensic scientist, yes.

17 Q. And you testified for the Government
18 regarding some ink analysis relevant to the case;
19 correct?

20 A. Among other things, yes.

21 Q. And do you recall that the trial
22 occurred in approximately February 2004?

23 A. Yes.

24 Q. And do you recall that you testified on
25 two different dates?

1 L. Stewart

2 A. Yes.

3 Q. And you testified that you had
4 personally participated in the forensic document
5 examination of the worksheet listing Martha
6 Stewart's stock holdings on which Peter Bacanovic
7 made a notation; correct?

8 A. I don't know if I said Peter Bacanovic
9 made the notation; it was a document where he
10 purportedly made the notations, yes.

11 Q. And on rebuttal did defense counsel ask
12 you about your familiarity with a book proposal;
13 correct?

14 A. That's correct.

15 Q. And that book proposal was by
16 Mr. LaPorte and Anthony Cantu, Tony Cantu?

17 A. That's correct.

18 Q. And at the time of that question on
19 February 25th, 2004 you were aware of that book
20 proposal; correct?

21 A. No, and that's not what I answered.
22 That was one of the accusations that was shown to
23 be false in the case, that was something that
24 Mr. LaPorte accused me of and that's what started
25 part of the investigation.

1 L. Stewart

2 Q. And following the Martha Stewart trial
3 where you testified, as we discussed, you were
4 charged criminally with false declarations before
5 the Court otherwise known as perjury; correct?

6 A. And found not guilty, yes.

7 Q. We'll stipulate that you were found not
8 guilty, that's a historic fact.

9 Now, at the time the prosecutors -- the
10 prosecutors met with you the day before they
11 charged you, did they not?

12 A. No.

13 Prosecutors were in a separate room
14 with an unknown-to-me video link and heard me
15 discussing matters with Secret Service
16 investigators, that they'd never met with me that
17 day, they had an unknown-to-me link into the room
18 and then charged me after they heard what I said.

19 Q. And is it your sworn testimony that at
20 the time you were charged there was a threat of a
21 wrongful prosecution suit from Martha Stewart and
22 Peter Bacanovic?

23 A. For two billion dollars.

24 Q. And it's your testimony that that
25 wrongful prosecution suit threat existed at the

1 L. Stewart

2 time you were charged?

3 A. That's my understanding, yes.

4 Q. Can you point to a single piece of
5 evidence anywhere, sir, that at the time you were
6 charged there was a threat of a wrongful
7 prosecution suit from Martha Stewart and Peter
8 Bacanovic?

9 A. I don't know what you mean by evidence.
10 It's something that came out in my preparation
11 for my defense that my lawyers found out.

12 Q. Are you aware of a single news article
13 or other public disclosure of a threat of
14 wrongful prosecution from Martha Stewart or Peter
15 Bacanovic prior to the time you were charged?

16 A. My lawyers told me that there were, but
17 at the time I did not read them.

18 Q. In fact, it was five months after the
19 Martha Stewart trial that you were charged with
20 perjury; correct?

21 A. Just before they were sentenced, yes.

22 Q. That's what you say in your affidavit,
23 correct, that it was five months?

24 In fact it was only three months after
25 your testimony; correct?

1 L. Stewart

2 A. If you are saying that I testified in
3 February, I don't recall the exact date. It
4 would have been the beginning of February, if it
5 was February, and so it would have been three and
6 a half, almost four months.

7 MR. SNYDER: I just need to take a
8 two-minute break. You can stay here or you
9 can go out. I need to clarify something.

10 THE VIDEOGRAPHER: Going off the
11 record. The time is 12 o'clock.

12 (Recess taken.)

13 THE VIDEOGRAPHER: We are back on the
14 record. The time is 12:02.

15 BY MR. SNYDER:

16 Q. Sir, you were charged based on a
17 criminal complaint filed on May 21st, 2004;
18 correct?

19 A. I don't know the date; that sounds
20 approximately right.

21 Q. And are you aware that the Government
22 disclosed the criminal charges against you to the
23 Court in the Martha Stewart case on that same day?

24 A. No, I'm not aware of what day they did
25 that.

1 L. Stewart

2 Q. Are you aware of a letter that Karen
3 Patton Seymour from the United States Attorney's
4 office sent to Judge Chin disclosing the perjury
5 charge? Have you ever seen that letter?

6 A. Yes, I have.

7 Q. And you are aware that in that letter
8 the Government reveals that they became aware of
9 the facts leading up to the criminal complaint a
10 week prior, on May 14th, from Miss Fortunato?

11 A. I am not aware of those dates, no.

12 Q. Let me show you what we will mark as
13 Defendants' Exhibit 18, which is the letter from
14 the Government.

15 (Defendants' Exhibit 18, letter dated
16 May 21, 2004 from U.S. Attorney David N.
17 Kelly, marked for identification, as of this
18 date.)

19 Q. Does this refresh your recollection,
20 sir, about the sequence of events, namely that
21 the Government notified the Court on May 21st,
22 the day you were charged, of the facts and
23 circumstances leading up to your arrest?

24 A. It doesn't refresh my recollection.
25 It's a letter by one side of an upcoming matter

1 L. Stewart

2 and so it shows their description of what they
3 believed happened.

4 Q. And the indictment that followed the
5 complaint charged you with having lied about
6 personally having conducted the ink testing and
7 about being familiar with the book proposal;
8 correct?

9 A. That's correct.

10 Q. Let's turn to your report, which is
11 Exhibit 13 in this case, and let me direct your
12 attention to paragraph 327.

13 A. Yes.

14 Q. On page 65.

15 You have four paragraphs that you
16 describe what you say happened leading up to your
17 charges, paragraphs 327 to 330; correct?

18 A. I count more than that, but we can talk
19 about those four if you like.

20 Q. All right.

21 In these paragraphs that I have
22 highlighted you start by informing the Court of
23 the idea that there was a threat of a
24 multibillion-dollar suit against the Government,
25 correct, and you say nearly five months after

1 L. Stewart

2 Martha Stewart and Peter Bacanovic were found
3 guilty; correct?

4 A. That's right. The --

5 Q. And the paragraphs that follow describe
6 you being questioned about the issues underlying
7 the charges and your being charged; correct?

8 A. That's correct.

9 Q. So the point of your reference to the
10 wrongful prosecution suit threat was to imply to
11 the Court that the threat somehow was the cause
12 of your being questioned and ultimately charged;
13 is that right?

14 A. No. My point was to indicate
15 everything I was aware of in case it was a
16 contributing cause; I don't know if it was or
17 not.

18 Q. You would agree that if a threat of a
19 multibillion-dollar suit against the Government
20 didn't occur until after you were charged then
21 such a threat could not be a contributing factor
22 to your arrest?

23 You'd agree with that; correct?

24 A. No, because I'm not aware that that's
25 what happened. It's my understanding that it was

1 L. Stewart

2 before that and it was prior to Martha Stewart
3 and Peter Bacanovic being sentenced, which
4 happened, I believe, right after this.

5 Q. When do you believe they were sentenced?

6 A. I don't know. It's on the Internet.
7 It's either late May or -- it's when they were
8 supposed to be sentenced.

9 Q. You mentioned five months in paragraph
10 327.

11 That's incorrect, is it not?

12 In fact, you were charged in May of
13 2004, only three months after your February 2004
14 testimony; correct?

15 A. As I've testified, I believe it was the
16 beginning of February for one and the end of May
17 for the other, so without checking the dates it's
18 probably more like four months.

19 Q. Well, it certainly wasn't five months;
20 correct?

21 A. Since my testimony, no, it was not five
22 months.

23 Q. Let's turn to what you say actually
24 happened.

25 You mentioned that there was this

1 L. Stewart

2 threat, then you say in paragraph 328 "I was
3 questioned about my knowledge of the subject."

4 What subject?

5 A. The prior paragraph where it talks
6 about the suit and the Government -- against the
7 Government for wrongful prosecution based in part
8 on the notoriety of the accused.

9 Q. Who questioned you?

10 A. The Secret Service investigators.

11 Q. And when was that?

12 A. That was the days leading up to the
13 arrest.

14 Q. So it's your sworn testimony that the
15 days leading up to your arrest U.S. Secret
16 Service agents questioned you about the
17 multimillion-dollar suit threat?

18 A. In part, yes. It was an inspection
19 being done based on the accusations from
20 Mr. LaPorte and Ms. Fortunato and they were
21 questioning me about a number of things.

22 Q. And your testimony here today is that
23 those Secret Service agents actually questioned
24 you about a multimillion-dollar threat of a suit?

25 A. No. You have to read what's in the

1 L. Stewart

2 paragraph there; they questioned me about my
3 knowledge of that.

4 Q. Knowledge of a threatened lawsuit?

5 A. No. Knowledge of the subject. It's in
6 328, I was questioned about my knowledge of the
7 subject.

8 Q. You testified a few minutes ago, just
9 within the past two minutes, that one of the
10 things the Secret Service questioned you about
11 was your knowledge of a threat of a lawsuit?

12 A. That's right. Once I brought it up to
13 them that I was aware of that, they questioned me
14 about it, they actually brought up some things
15 pertinent to that and then they discussed it with
16 me and that is at the time when I believe the
17 prosecutors were listening in, and part of my
18 testimony at that time concerned firsthand
19 information that I heard in the prosecutor's
20 office from the chief prosecutor, and that was
21 disclosed at that time, that's what I mean by
22 knowledge of the subject.

23 Q. When you say you provided firsthand
24 information regarding a meeting in the
25 prosecutor's office, what information did you

1 L. Stewart

2 have regarding a meeting in the prosecutor's
3 office?

4 THE WITNESS: Maybe you and I should
5 talk about this, Dean. I don't know what I
6 can talk about here.

7 MR. BOLAND: Can you just repeat the
8 question, Mr. Snyder, so I can determine if
9 there is an objection for privilege? I
10 don't know what he's talking about.

11 Q. In paragraph 328 you say "I was
12 questioned about my knowledge of the subject."

13 Who questioned you?

14 A. Secret Service investigators.

15 Q. And you said provided firsthand
16 information regarding a meeting in the
17 prosecutor's office during which the chief
18 prosecutor disclosed pertinent case background
19 information.

20 Who was the prosecutor you are
21 referring to?

22 A. It was the chief prosecutor in the
23 Martha Stewart trial, I don't remember her name.

24 Q. At this time I want to remind
25 Mr. Boland and the witness of Judge Foschio's

1 L. Stewart

2 particular rules governing depositions in his
3 court. Rule 1, if you need clarification, a
4 definition or explanation of any words, questions
5 or documents throughout this deposition you are
6 to ask me as deposing counsel rather than your
7 own counsel.

8 Do you understand that?

9 A. Yes, I do.

10 Q. You and the plaintiff's counsel may not
11 engage in private conversation during the
12 deposition or any breaks except to determine
13 whether to assert a privilege.

14 Do you understand that?

15 A. Yes.

16 Q. Thank you.

17 Now, who was the chief prosecutor in
18 the Martha Stewart trial?

19 A. I don't recall her name, it's in the
20 Internet and it's in my documents back in the
21 office.

22 Q. Was it Karen Patton Seymour?

23 A. That sounds right.

24 Q. What firsthand information regarding a
25 meeting in Ms. Seymour's office did you provide

1 L. Stewart

2 during the questioning that you refer to in
3 paragraph 328?

4 A. I don't know that I am allowed to
5 disclose that to you, that's why I was asking for
6 a break to discuss it.

7 Q. Was Ms. Patton Seymour your lawyer?

8 A. No.

9 Q. Did you sign a confidentiality
10 agreement in connection with that interview?

11 A. I don't believe so, no.

12 Q. And at the time you were being
13 questioned as a subject or target of a criminal
14 investigation; correct?

15 A. No. At the time of the meeting I was
16 preparing for the Martha Stewart trial.

17 Q. Certainly, fine, all right.

18 So can you please tell the Court what
19 pertinent case background information are you
20 referring to in paragraph 328?

21 A. I will try.

22 Leading up to the Martha Stewart trial
23 there were four or five independent meetings that
24 I attended for, in the preparation of the case
25 and trial preparation, those were -- began in, I

1 L. Stewart

2 believe, late December 2003 and went right up to
3 the trial date. In one of those meetings -- I
4 believe it was the fourth one, if I'm not
5 mistaken -- there were the chief prosecutor
6 present, there were two attorneys from the office
7 present, there was myself, another Secret Service
8 representative and two FBI agents along -- and I
9 believe I began by saying the chief prosecutor.

10 During that meeting she received a
11 phone call that she took out in the open in front
12 of all of us, she seemed openly excited about the
13 phone call. At the end of the call she looked at
14 the group of us and she said, I'm so happy that
15 we are taking this case involving Martha Stewart
16 to trial, we need to send a message to the
17 American people that this kind of thing would not
18 be allowed.

19 So as far as that was pertinent to the
20 question at hand in front of me as to whether or
21 not there was some kind of a prosecution based on
22 the notoriety of the people, I felt it was
23 important for me to tell that to the
24 investigators, and unbeknownst to me the
25 prosecution team was listening in on the

1 L. Stewart

2 conversation.

3 Q. Sir, we established that you were
4 charged on May 1st, 2004; correct?

5 A. That's what you said, yes.

6 Q. And you had gone to the prosecutor's
7 office the day before that on May 20th; correct?

8 A. No.

9 Q. Secret Service offices the day before?

10 A. That's correct.

11 Q. And you were also interviewed the
12 previous day, on May 19th; correct?

13 A. I believe the previous two days.

14 Q. Right.

15 And during those days of interview in
16 fact you told the Secret Service that you did not
17 conduct any actual tests in connection with the
18 investigation of Peter Bacanovic and Martha
19 Stewart; isn't that correct?

20 A. That, that's not correct.

21 Q. And did you tell the agents that you
22 didn't get involved with the making of the TLC
23 plates?

24 A. No, that's not correct.

25 Q. Did you tell the investigators, the

1 L. Stewart

2 agents, that your only involvement was looking at
3 the final test results?

4 A. No. I believe you're breaking up the
5 segments of what I discussed with them and you're
6 misinterpreting it.

7 Q. Did you tell the interviewing agents
8 that you were not aware of the book proposal
9 before it was shown to you on the witness stand
10 during the trial?

11 A. Correct. I was not aware of the book
12 proposal, but that's not the question that was
13 posed to me on the stand.

14 Q. In paragraph 333 you claim in your
15 report submitted in this case that it was made
16 clear to the jury that I had, in fact, testified
17 truthfully. I was completely exonerated at the
18 trial and found not guilty.

19 Did I read that correctly?

20 A. That sounds right.

21 Q. And you were a law enforcement officer
22 for over 26 years; is that correct?

23 A. No. I was never a law enforcement
24 officer.

25 Q. You were an employee of the United

1 L. Stewart

2 States Government for over 26 years?

3 A. I was credited with 27 as commissioned.

4 Q. You had substantial exposure to the
5 legal system, correct, during that career?

6 A. Yes.

7 Q. And you are aware that a finding of not
8 guilty can mean that the Government has not
9 sustained its burden of proof on each element
10 beyond a reason doubt, aren't you?

11 A. I am aware of that and I am also aware
12 that I am not guilty in this matter, so whether
13 it's an acquittal or not guilty, I am not guilty.

14 Q. You are aware that a not guilty verdict
15 doesn't mean that the jury found that you
16 testified truthfully at the trial, are you not?

17 A. I did not testify at the trial, so --

18 Q. I'm sorry, the Martha Stewart trial.

19 In other words, the jury finding of not
20 guilty isn't a finding that you testified
21 truthfully at the Martha Stewart trial; correct?

22 A. I believe it is.

23 Q. Are you aware that a perjury conviction
24 requires a finding of materiality, sir?

25 A. No, I'm not aware of that law.

1 L. Stewart

2 Q. Are you aware that a perjury conviction
3 requires a finding that the testimony at issue
4 was actually material to the proceedings?

5 A. I'm not aware of a law, I just know
6 that I did not lie in that case.

7 Q. Moving to paragraph 334, you also
8 asserted that based on the California case People
9 versus Williams arrests which do not result in
10 convictions are inadmissible either as proof of
11 guilt or for impeachment.

12 Do you see that?

13 A. Yes, I do.

14 Q. Did you research that law yourself?

15 A. No. That's come out in previous cases
16 where Mr. LaPorte has brought this up.

17 Q. Who told you about People versus
18 Williams?

19 A. No one's told me about it, it's just
20 been cited in previous cases.

21 Q. Where did you get that citation from to
22 insert in your report?

23 A. From lawyers that have been involved in
24 previous cases where Mr. LaPorte's been on the
25 other side.

1 L. Stewart

2 Q. Are you aware that the Williams case
3 applies to those who have been criminally
4 charged -- are you aware that this case has
5 nothing to do with expert witnesses and whether
6 they can or cannot be impeached?

7 A. I am not aware of the case.

8 Q. Why do you put it in your report if you
9 are not aware of it?

10 A. As assistance to the trier of fact.

11 Q. But you have no idea what this case
12 actually stands for, do you?

13 A. I don't believe it's my job to know the
14 law. I just put it in there because it's been
15 cited before in matters that Mr. LaPorte has
16 brought up concerning the same subject.

17 Q. So you put a case citation in your
18 report even though you have no idea what the case
19 means; is that correct?

20 A. No, it's not correct.

21 Q. Tell the Court what People versus
22 Williams stands for, what legal proposition.

23 A. It's my understanding from lawyers in
24 the case that it showed that you are not allowed
25 to bring into court information concerning a

1 L. Stewart

2 matter that was -- that someone was found not
3 guilty of.

4 Q. When you come to court as an expert
5 witness your credibility is very much at issue,
6 isn't it?

7 A. Always.

8 Q. So if you lied in a prior proceeding or
9 lied here earlier today in the deposition, you'd
10 agree that that would be relevant to a fact
11 finder in assessing your credibility as an expert?

12 A. Yes.

13 Q. And it's certainly relevant for the
14 Court's assessment of your credibility to know
15 that you were charged of perjury and then
16 acquitted; isn't it?

17 A. I don't know. To me, what's been
18 presented to me in the past is that the law says
19 it can't be brought up to the Court, but that's
20 for you guys to decide.

21 Q. Mr. LaPorte's here in this conference
22 room, is he not?

23 A. Yes, he is.

24 Q. And you've accused him several times --
25 I'm using your word -- of engineering perjury

1 L. Stewart

2 charges against you?

3 A. I never used the word "engineer."

4 Q. Or behind perjury charges in some way?

5 A. I don't know that I've accused him. I
6 have stated what I understand to be the fact.

7 Q. Do you believe that Mr. LaPorte was
8 behind the bringing of criminal charges against
9 you?

10 A. I was told that he was in part behind
11 it, yes.

12 Q. Who told you that?

13 A. Lawyers that were preparing for my case.

14 Q. And do you know what facts or evidence
15 they based that assertion on?

16 A. Grand jury testimony and individual
17 interviews.

18 Q. Are you aware that Mr. LaPorte never
19 met with prosecutors prior to your being charged?

20 A. I don't know who she met with prior to
21 me being charged.

22 Q. Can you tell the Court every factual
23 basis you have to accuse Mr. LaPorte of being
24 behind the criminal charges that the United
25 States Government brought against you?

1 L. Stewart

2 A. Well, first, I did not say he was
3 behind it, I said he was a contributor, and I was
4 told that by lawyers that were preparing for the
5 case.

6 Q. And did the lawyers tell you what facts
7 or evidence, if any, they were basing that
8 assertion on?

9 A. Grand jury testimony and interviews
10 with the inspection team with people like
11 Mr. LaPorte.

12 Q. Is there any other time other than the
13 Martha Stewart case in which you have been
14 accused of testifying falsely?

15 A. Yes. The case in Germany involving
16 Ivan the Terrible, his real name was John
17 Demjanjuk, D-e-m-j-a-n-j-u-k.

18 Q. Prosecutors in Munich opened an
19 investigation into allegations of perjury against
20 you; correct?

21 A. Yes, they did. The judge found it to
22 be not credible and dismissed it.

23 Q. When did that happen?

24 A. When I testified in the case, it's in
25 the list of testimony.

1 L. Stewart

2 Q. And was there a written decision by the
3 Court in --

4 A. Yes. I brought that if you'd like to
5 see it.

6 Q. Your counsel can provide that to us
7 later.

8 A. I've also brought that up every other
9 time Mr. LaPorte has brought this up and offered
10 it and it's never been accepted.

11 Q. And now am I correct, sir, that there
12 are times when you have been excluded by courts
13 and not permitted to testify as an expert?

14 A. That's brought up every time against
15 Mr. LaPorte as well.

16 Q. I'm going to move to strike all of
17 those gratuitous references. I understand you've
18 got this animus here, but pretty much every time
19 I ask you a question you mention Mr. LaPorte. I
20 am not asking you about Mr. LaPorte.

21 We'll stipulate that you don't like him
22 and that you think that all of my questions were
23 supplied by him and whatever else concerning
24 Mr. LaPorte you want to stipulate, us to
25 stipulate to concerning your attitudes about him,

1 L. Stewart

2 but just I'd ask that you not answer all of my
3 questions with references to Mr. LaPorte, it just
4 delays things.

5 MR. BOLAND: Objection.

6 A. I'm just simply trying to explain it to
7 the trier of fact as to what's going on here.

8 I would think, as a witness in these
9 kind of cases, that things that have been done
10 before would be part of a playbook and we could
11 cut through a lot of this, but I will certainly
12 discuss it all, and to correct one thing that you
13 said, I do not have any animosity against
14 Mr. LaPorte as far as an individual, I don't know
15 him that well, I'm talking about him as a
16 forensic scientist.

17 Q. Let's talk about the Lake Forest case,
18 okay, sir? You recall that? It was just two
19 years ago; right?

20 A. I believe so.

21 Q. In that case the Court found the method
22 you used didn't meet the Frye standard; correct?

23 A. That's after I testified in the case
24 they decided that the method did not meet it.

25 Your question earlier was have I been

1 L. Stewart

2 excluded.

3 No. I testified in that case, they
4 decided that they did not want to use that aspect
5 of the testimony, they allowed the other aspects
6 of the testimony in.

7 Q. Didn't the Court say that your
8 testimony not only didn't meet the Frye standard,
9 but that it didn't meet any basic scientific
10 principles studied by the Court? Wasn't that the
11 Court's finding?

12 A. That's what they said about one aspect
13 of the analysis, yes.

14 Q. And as to that aspect of your analysis
15 the Court found that your testimony was to
16 inconclusive as to be useless; correct?

17 A. I imagine they did. They excluded that
18 part of the analysis.

19 Q. And that wasn't the only time that a
20 court excluded a part of your analysis, was it?

21 A. To my knowledge, it is.

22 Q. Let's talk about the case in British
23 Columbia, Ellson versus Ellson.

24 Do you remember that case?

25 A. Yes.

1 L. Stewart

2 Q. You were retained by the defendants who
3 alleged that numerous documents were forgeries;
4 correct?

5 A. I don't remember if I was retained by
6 the defendants or who. I was retained by
7 Mr. Ellson.

8 Q. And do you remember the Court rejecting
9 your handwriting analysis that certain signatures
10 were forgeries?

11 A. No, I don't recall that.

12 Q. Do you recall the Court noting that in
13 some instances you made a finding of forgery with
14 respect to signatures that the defendants
15 themselves confirmed were their authentic
16 signatures?

17 A. No, I'm not aware of that.

18 Q. Are you aware of any criticism --

19 MR. SNYDER: Withdrawn.

20 Q. Are you aware of any findings of the
21 court in the British Columbia case where your
22 testimony was rejected?

23 A. No. I testified in the case and I'm
24 not aware of the findings after the fact.

25 Q. You're not aware of them or you don't

1 L. Stewart

2 recall them?

3 A. I am not aware of them, I have never
4 been told what the findings were.

5 Q. Are you familiar with the protective
6 order in this case?

7 A. No.

8 Q. No one ever told you about it?

9 A. No.

10 Q. Do you know what a protective order is?

11 A. Yes.

12 Q. Do you know whether you have complied
13 with the protective order in this case with
14 respect to your role as an expert witness?

15 A. I've never signed a protective order,
16 but had I signed one I believe I have complied
17 with the protective order.

18 Q. Well, but not knowing its terms you
19 can't tell this court one way or another whether
20 you are in compliance with the protective order?

21 A. No. I was trying to elaborate and you
22 cut me off.

23 Understanding what a typical protective
24 order is and understanding what this case is
25 about, I have not disclosed information to anyone

1 L. Stewart

2 outside of the lawyers in the case, so I believe
3 I would have complied with a typical protective
4 order, but I have not signed a protective order
5 in this case.

6 Q. Did Mr. Lake ask you to sign Exhibit A
7 to the protective order in this case?

8 A. I don't believe so. I could be
9 mistaken. I don't recall signing anything with
10 Mr. Lake.

11 Q. Did anyone at the Milberg firm ask you
12 to sign Exhibit A to the protective order?

13 A. No.

14 Q. Did anyone at Mr. Argentieri's office,
15 including Mr. Argentieri, ask you to sign Exhibit
16 A to the protective order?

17 A. Not that I recall, no.

18 Q. Did Mr. Boland?

19 A. No.

20 Q. Did Mr. Ceglia?

21 A. No.

22 Q. Are you familiar with the July 1, 2011
23 hard copy document inspection protocol in this
24 case?

25 A. I don't know if it was titled that, but

1 L. Stewart

2 I'm familiar with a document where it dictated
3 what we could do.

4 Q. And you are aware that that document
5 governed the forensic examination of the
6 so-called original Work For Hire document;
7 correct?

8 A. Yes.

9 Q. Did you play any role in drafting the
10 language for that order?

11 A. I don't recall.

12 MR. SNYDER: Let me mark as Exhibit 19
13 what in the case docket is document number
14 84, which is the hard copy document
15 inspection protocol.

16 (Defendants' Exhibit 19, hard copy
17 document inspection protocol, marked for
18 identification, as of this date.)

19 Q. I ask if this is the protocol we have
20 been discussing.

21 A. I believe that's the document I
22 referred to.

23 Q. When did you first see this document?

24 A. I assume sometime between July 1st,
25 2011 and July 15th. It was filed on July 1st and

1 L. Stewart

2 the examination was on the 15th.

3 Q. And you were not present at the
4 inspection on July 13th, were you?

5 A. No, I was not.

6 Q. And you were not present on July 14th,
7 were you?

8 A. I'll have to refer to my dates, they've
9 been provided to you already, but I was present
10 in Buffalo for part of the examination time there
11 and then my examination occurred in Chicago
12 beginning on the 15th.

13 I'm sorry, not the 15th. I need to
14 refer to my notes.

15 Q. You were there on the 16th, just that's
16 when you were there.

17 So you are aware that examination
18 occurred on the 13th and 14th?

19 I'm sorry.

20 The examination occurred on July 14th
21 and 15th and you were not present for either of
22 those days; correct?

23 A. I would believe I was there at the last
24 day of examination in Buffalo.

25 Q. And did plaintiff's counsel ask you to

1 L. Stewart

2 be present at the inspection on July 14th or 15th?

3 A. They asked me to coordinate someone
4 being there and I coordinated with Mr. Blanco to
5 be there in the beginning and me to be there at
6 the end.

7 Q. And why weren't you present at the
8 beginning of this important examination if you
9 are overseeing the experts?

10 A. Because it would be redundant and a
11 waste of money for us.

12 Q. And is it your sworn testimony that you
13 told the attorneys to have Mr. Blanco present on
14 July 14th, the first day of the inspection?

15 A. No. I asked him to be there for the
16 first day of the inspection, but I understand
17 there was a reason that he couldn't be there and
18 so he wasn't able to get there until a little bit
19 later on.

20 Q. What were you doing on July 14th, 2011?

21 A. I don't recall.

22 Q. Were you working on another case?

23 A. Probably.

24 Q. Do you know what case you were working
25 on?

1 L. Stewart

2 A. No.

3 Q. Do you have a calendar or any record
4 that would tell you what you were doing on July
5 14th that prevented you from being present at the
6 inspection?

7 A. I have to answer that in two ways.

8 Yes, I have a calendar that would say
9 what I was working on, I do maintain a large
10 number of cases, and secondly, I chose not to be
11 there at the beginning of the examination because
12 of redundancy and I chose to come towards the end
13 of the examination.

14 Q. So you knew the inspections would begin
15 on July 14th; correct?

16 A. Yes.

17 Q. And you knew that no expert from the
18 plaintiff's side would be present that day?

19 A. No. I was not aware Mr. Blanco could
20 not be there that day until later on.

21 Q. When did you learn that Mr. Blanco
22 wouldn't be able to be present on the first day?

23 A. I recall it being something like the
24 day before, but I don't know.

25 Q. Did you make any effort to have any

1 L. Stewart

2 other expert attend?

3 A. No. If my -- if I was told that the
4 day before, it wouldn't have been possible
5 without a private jet to get here in time.

6 Q. Did you ask to delay it so that someone
7 from the plaintiff's expert team could be
8 present?

9 A. No. I thought it was fine for him to
10 be there. I knew it was being videotaped and I
11 thought it was fine for him to come in a little
12 bit late.

13 Q. Were you aware there would be two
14 experts inspecting the hard copy documents
15 produced by plaintiff on that first day?

16 A. Yes, I believe it was.

17 Q. And were you aware those experts were
18 Peter Tytell and Frank Romano?

19 A. Yes.

20 Q. And you were familiar with both
21 Mr. Tytell and Mr. Romano as experts prior to
22 July of 2011; correct?

23 A. I'm very familiar with Mr. Tytell.
24 Mr. Romano is not a forensic document expert.

25 Q. You have respect for Mr. Tytell as an

1 L. Stewart

2 experienced expert, do you not?

3 A. I have a great deal of respect for
4 Mr. Tytell.

5 Q. And you were not familiar with
6 Professor Romano prior to July of 2011?

7 A. Oh, I am familiar with him. He was
8 part of Rochester Institute of Technology, he was
9 part of classes that I produced for the school
10 and he took over some of those classes after I
11 left, so I'm familiar with him, but he is not a
12 forensic documents expert.

13 Q. He is a highly regarded expert in his
14 field, though, is he not?

15 A. On printing methods, yes.

16 Q. Were you aware that on the second day
17 of inspection, July 15th, Gus Lesnevich would
18 conduct an examination of the questioned
19 documents; correct?

20 A. Yes.

21 Q. And Gus Lesnevich is widely regarded as
22 one of the leading handwriting experts in the
23 world; correct?

24 A. I don't know what you mean by widely.
25 He is regarded as a forensic document expert.

1 L. Stewart

2 Q. Sir, you know, do you not, that Gus
3 Lesnevich is regarded widely in the expert
4 community as one of the top handwriting experts
5 around?

6 MR. BOLAND: Objection.

7 A. I will try to answer your question a
8 different way.

9 I know of instances where he's regarded
10 and I know of instances where he's not, and so
11 when you say highly regarded, that is your
12 adjective, not mine.

13 Q. Are you aware that the United States
14 Government over the past two decades has often
15 retained Gus Lesnevich as their primary
16 handwriting expert in their most important high
17 profile cases? Are you aware of that, sir?

18 A. As a private citizen I would be
19 surprised, but no, I am not aware of that.

20 Q. Are you aware that in important cases
21 involving terrorism and potential attacks against
22 the United States of America the Government hires
23 Mr. Lesnevich as their handwriting expert?

24 A. As a private citizen, I'd be very
25 surprised, but no, I am not aware of that.

1 L. Stewart

2 Q. Do you have respect for Mr. Lesnevich
3 as a handwriting expert?

4 A. I don't know him, I only know of cases
5 he has been involved in and, as I said, there are
6 some that he is respected on and some that I
7 understand he's not.

8 Q. And which do you understand he's not
9 respected on?

10 A. I don't have citations for you, I just
11 know the field is a fairly small field and I know
12 of things that have been said in the past.

13 Q. You are comfortable making that
14 statement --

15 MR. SNYDER: Withdrawn.

16 Q. Are you comfortable making a
17 disparaging statement about Mr. Lesnevich's
18 expertise without having a single fact to back
19 that up?

20 A. What I'm comfortable with is removing
21 your adjective highly when you describe him as
22 being respected. I don't know that, I don't know
23 him that well, I only know what I've heard.

24 Q. Tell the Court every fact or piece of
25 evidence that you have to support the notion that

1 L. Stewart

2 Mr. Lesnevich is not respected as one of the
3 leading handwriting experts in the world.

4 A. First, I never said he was not
5 respected; secondly, I don't have facts, I only
6 have what I have been told.

7 Q. Who told you?

8 A. Over the years I've heard things at
9 meetings, I've heard things from people that used
10 to work with him in government agencies. I don't
11 have names and instances with me. Again, I don't
12 know the man.

13 Q. So tell me who at any meeting ever said
14 a negative word about Mr. Lesnevich.

15 A. I can't give you names and meetings at
16 this point. Even if you leave a blank, I don't
17 know if I can give it to you.

18 I was answering your question which is
19 a broad question about whether he's highly
20 respected. I answered it the best that I can.
21 If you want specifics, I have to step back and
22 say that I don't know the man.

23 Q. Have you heard it being said about
24 Mr. Lesnevich that he is one of the leading
25 handwriting experts in the world?

1 L. Stewart

2 A. I've heard you say it.

3 Q. Have you heard anyone else say it?

4 A. No, I have not.

5 Q. Who would you regard, sir, as the
6 leading handwriting experts in the world?

7 Names, please.

8 A. It depends on if you are talking about
9 with the Government or in private practice.

10 Q. Let's start with private practice.

11 A. I respect Mr. Tytell as a handwriting
12 expert, I respect Mr. Blanco as a handwriting
13 expert, they are both in private practice.

14 Q. Do you respect Mr. Lesnevich as a
15 handwriting expert?

16 A. Again, I don't know him as a
17 handwriting expert.

18 Q. Others besides Mr. Tytell and
19 Mr. Blanco, two experts in this case?

20 A. That I respect in the private field,
21 not as much as those two, no.

22 Q. And in the Government, what handwriting
23 experts do you respect?

24 A. People that have -- let me break it
25 down to people that have retired from the

1 L. Stewart

2 Government first. Dave Crown, ex-CIA postal
3 service, and John Hargett, ex-Secret Service; Ed
4 Alford, ex-Secret Service, I respect all of those
5 guys.

6 As far as people that are currently
7 within the Federal Government, I believe Richard
8 Dusak is still with the Secret Service, I respect
9 him as a handwriting expert.

10 Q. Have any of the individuals you've
11 mentioned as worthy of your respect as
12 handwriting experts ever made a single
13 disparaging comment about Gus Lesnevich's skills
14 as an expert?

15 A. My recollection is yes, but I cannot
16 give you a specific statement, I can only tell
17 you that my recollection is that Mr. Hargett,
18 John Hargett did not have a great deal of respect
19 for Mr. Lesnevich.

20 Q. All right.

21 And what do you base that on?

22 A. Conversations that he's had with me.

23 Q. When was the last time you discussed
24 with Lesnevich with this individual?

25 A. This would have been many years back.

1 L. Stewart

2 Q. So if we called Mr. Hargett on the
3 phone and speak with him, do you think he'll
4 remember that conversation?

5 A. I doubt he would bring it into a case
6 like this and discuss it with you without being
7 subpoenaed, but I don't know if he would remember
8 it or not. You are asking me for my recollection,
9 not his.

10 Q. You are aware, are you not, that none
11 of the plaintiff's experts were present for the
12 hard copy inspection on July 14, 2011?

13 A. I would have to check our notes, but I
14 believe that Mr. Blanco showed up late in the day
15 on the 14th.

16 Q. And what do you base that on?

17 A. What I believe the notes were, but,
18 again, I don't have that in front of me.

19 Q. What notes are you referring to?

20 A. We would have to look at his report
21 where it says when he first got there.

22 Q. Are you aware that on the third day of
23 inspection Mr. LaPorte was scheduled to conduct
24 an examination of the questioned documents?

25 A. A physical examination, not a chemical

1 L. Stewart

2 one, I believe that's correct.

3 Q. And you consider Mr. LaPorte to be a
4 respectable forensic scientist, do you not?

5 A. You've asked me not to disparage him.

6 Q. Well, I am asking you a simple question.

7 A. No, I don't believe he is a respectable
8 forensic scientist.

9 Q. Let me mark what we will say is
10 Defendants' 20.

11 And I did not ask you not to disparage
12 him, you are free to testify as you see fit. I
13 am not in charge of your testimony, I'm just
14 asking questions.

15 (Defendants' Exhibit 20, excerpt from
16 transcript of deposition of Larry Stewart
17 held on March 15, 2010, marked for
18 identification, as of this date.)

19 Q. This is a -- do you recall testifying
20 again in Florida in March of 2010?

21 A. Not really, but I recall the case.

22 Q. All right.

23 So let's -- you certainly testified as
24 an expert in the Lake Forest Master Community
25 case against Orlando Lake Forest Joint Venture;

1 L. Stewart

2 correct?

3 A. Yes.

4 Q. And this was just a little over two
5 years ago; correct?

6 A. That's correct.

7 Q. And let's direct your attention to page
8 67 of the transcript, and line 14 is a question
9 and then your answer under oath is at line 16.

10 Can you read the question and answer,
11 please.

12 A. Do you -- I'm sorry, it does not start
13 with the, that's me.

14 I states "Do you consider Mr. LaPorte
15 to be a respectable forensic scientist?."

16 My answer is "Yes, sir, I believe so."

17 That was then, this is now.

18 Q. Are you aware that on the fourth day of
19 inspection, July 19, 2011, Dr. Al Lyter would
20 examine the questioned documents?

21 A. Yes.

22 Q. And you have respect for Dr. Lyter as a
23 forensic examiner, do you not?

24 A. Yes, I greatly respect him.

25 Q. And you didn't observe any observations

1 L. Stewart

2 until July 16th, correct, when you observed
3 Mr. LaPorte conduct his exam?

4 A. Again, I'd have to check the dates. I
5 was there for Mr. LaPorte and Mr. Lyter, I
6 believe, at the beginning and also in Chicago.

7 Q. You did not observe in person the
8 examination of Peter Tytell, did you?

9 A. No, I did not.

10 Q. And you did not observe Frank Romano's
11 or Mr. Lesnevich's examinations, did you?

12 A. No, I did not.

13 Q. You did not observe in person the
14 documents presented for inspection until July
15 16th, the day you were there; right?

16 A. If that's the first day I was there,
17 yes.

18 Q. And the first time you saw the Work For
19 Hire document, the original, was on July 16,
20 2011; correct?

21 A. That's what you're telling me without
22 me referring to my notes, I believe you.

23 Q. Now, did you speak with Mr. Blanco
24 after he viewed the Work For Hire document on the
25 afternoon of July 15th and before you attended

1 L. Stewart

2 the inspection on the morning of July 16th?

3 A. I don't remember.

4 MR. SNYDER: The tape is over, so we're
5 going to need to take a break.

6 THE VIDEOGRAPHER: Going off the
7 record. The time is 12:45. This ends tape 2.

8 (Discussion off the record.)

9 THE VIDEOGRAPHER: We are back on the
10 record. This is still tape number 2.

11 MR. SNYDER: Off the record during the
12 break I offered the witness and his lawyer
13 the opportunity to have lunch whenever they
14 wanted to at their pleasure and discretion.

15 Mr. Stewart off the record said that's
16 fine as long as we're done at 5:30.

17 I just want to make clear that we have
18 seven hours to complete this deposition,
19 that is seven hours of testimony, and it's
20 highly unlikely we will be done by 5:30. If
21 we can be done, that would be wonderful, but
22 this deposition is not ending at 5:30 if we
23 have not completed what we need to complete
24 and the seven hours hasn't elapsed, so I
25 just want to make that clear. If anyone has

1 L. Stewart

2 a problem with that, they should speak up
3 now.

4 MR. BOLAND: I agree with you about the
5 seven-hour rule, Mr. Snyder. I would just
6 note that we've had two breaks already this
7 morning that your side indicated would be
8 approximately five minutes and one went a
9 half hour and one went 15 minutes, and
10 myself and the witness, while you were out
11 and one of your representatives, I don't
12 know if it was a summer associate or
13 individuals in the back was here, we sat
14 here that entire time except for probably a
15 three-minute break to the bathroom and we
16 assumed it would be a five-minute bathroom
17 break, so we were present and ready for this
18 deposition to continue and the calculation
19 of the seven hours I think in all fairness
20 shouldn't count the decision of your side at
21 your discretion to leave the room for longer
22 than it takes to go 50 feet down the hall to
23 the bathroom and spend a half hour or 40
24 minutes doing whatever you're doing and then
25 expect that the deposition is essentially

1 L. Stewart

2 suspended while my client and I sit here and
3 wait.

4 So I do respect everyone's need for
5 bathroom breaks, et cetera, but the
6 seven-hour calculation, in all fairness,
7 should go relative to a few breaks here and
8 there being taken out of that calculation,
9 it should continue marching on unless my
10 client I have excused ourselves for a half
11 hour or 45 minutes or whatever for whatever
12 purpose.

13 MR. SNYDER: We disagree. Thank you.

14 THE WITNESS: I would like to say that
15 I don't have any problem continuing through
16 lunch as well if it's a time problem for
17 you. I have brought snacks and I'm fine to
18 continue.

19 MR. BOLAND: And I'm prepared to
20 continue as well.

21 THE VIDEOGRAPHER: Going off the
22 record. The time is 12:48. This ends tape 2.

23 (Recess taken.)

24 THE VIDEOGRAPHER: We are back on the
25 record. The time is 12:58. This is tape

1 L. Stewart

2 number 3.

3 MR. SNYDER: I will mark as Defendants'
4 21 a document entitled "STREET FAX."

5 (Defendants' Exhibit 21, two-page
6 document entitled "STREET FAX" dated April
7 28, 2003, marked for identification, as of
8 this date.)

9 BY MR. SNYDER:

10 Q. Are you familiar with this document?

11 A. Yes, I am.

12 Q. What is it?

13 A. A two-page contract bearing the title
14 "STREET FAX" bearing the date of April 28, 2003.

15 Q. And do you know where this document was
16 found?

17 A. No.

18 Q. Did you ever ask anyone about this
19 document?

20 A. Did I ask about it?

21 No.

22 Q. You are aware that this is the document
23 that defendants contend is the authentic contract
24 between Mr. Zuckerberg and Mr. Ceglia; correct?

25 A. Yes.

1 L. Stewart

2 Q. When did you first see this document?

3 A. I don't know if I first saw it in
4 Buffalo or if I first saw it by way of a scanned
5 image prior to that, but it was around that time.

6 Q. And when you saw the document what was
7 your reaction?

8 A. It's a two-page document and it has the
9 signatures for the same two individuals as the
10 document that's in contention in this case.

11 Q. But did you have a particular reaction
12 to the fact that page 1 of this contract makes no
13 reference to Facebook and if authentic means that
14 the contract attached to the complaint is a fake?

15 A. I have no reason to believe that and so
16 no, I cannot say that.

17 Q. What inquiry, if any, did you make to
18 determine whether this contract was authentic
19 before agreeing to continue as an expert in this
20 case?

21 A. I made no actions that way, that makes
22 no sense. It's a document that's in contention
23 in a case and it was submitted as an additional
24 document to look at, but not -- but at the core
25 of this case is a completely different document,

1 L. Stewart

2 so I would not have asked to see additional
3 documents relative to the Street Fax.

4 Q. If you concluded as a matter of --
5 MR. SNYDER: Withdrawn.

6 Q. If you concluded that this Street Fax
7 contract was authentic, meaning the contract
8 signed by Mr. Zuckerberg and Mr. Ceglia in March
9 of 2004, would you continue to serve as an expert
10 in this case?

11 A. Well, first off, I did not conclude it
12 was --

13 Q. Sir, I'm asking you if hypothetically
14 you were to conclude --

15 MR. SNYDER: Withdrawn.

16 Q. If it was demonstrated to you that that
17 was authentic and you so concluded, would you
18 continue to represent Mr. Ceglia in this case?

19 A. Yes.

20 MR. BOLAND: Objection.

21 A. They are two separate documents, so,
22 yes. It makes no difference to me whether this
23 is an authentic document. It has no bearing on
24 the other document. The other document stands on
25 its own.

1 L. Stewart

2 Q. Are you aware Mr. Ceglia has submitted
3 a sworn statement to the Court that he signed
4 only a single contract with Mr. Zuckerberg in
5 2004?

6 A. No, I'm not aware of that.

7 Q. If you learned of that --

8 MR. SNYDER: Withdrawn.

9 Q. Assume Mr. Zuckerberg and Mr. Ceglia
10 signed only one contract in 2004. Assume further
11 that you concluded that the Street Fax document
12 was authentic, would you still continue to serve
13 as an expert in this case?

14 A. First off, I can't assume any of that.

15 Q. I'm asking you to assume as an expert.

16 A. I can't because I know that the
17 handwriting analysis does not agree with your
18 opinion.

19 Q. Which handwriting analysis on the
20 Street Fax contract doesn't agree with my
21 opinion?

22 A. I know the handwriting analysis on the
23 document in contention in this case, the Facebook
24 contract, Work For Hire contract, the handwriting
25 on that has been identified to Ceglia and

1 L. Stewart

2 Zuckerberg, so it makes no difference to me what
3 you say about the Street Fax.

4 Q. Sir, do you know where this two-page
5 scan of the Street Fax contract came from?

6 A. A scanner and a computer is all I know,
7 I don't know where.

8 Q. Are you aware that it was attached to
9 an e-mail sent on March 3rd, 2004 by Paul Ceglia
10 to a lawyer named Jim Kole at the Sidley & Austin
11 law firm?

12 MR. BOLAND: Objection.

13 A. No, I'm not aware of that.

14 Q. Did anyone ever tell you that?

15 A. Not that I recall.

16 Q. Did you read that in any of the
17 defendants' papers?

18 A. Not that I recall. Again, if I read
19 anything about the Street Fax document I went
20 past it.

21 Q. Are you aware that it is defendants'
22 position that Paul Ceglia sent that version of
23 the contract to a lawyer at Sidley & Austin in
24 2004?

25 A. No, I'm not aware of that.

1 L. Stewart

2 Q. So when you were provided with the
3 Street Fax contract did you ask where it came
4 from?

5 I'm not asking you to look at your
6 report.

7 MR. SNYDER: Let the record reflect the
8 witness is paging through his report.

9 A. I'm trying to answer you correctly.

10 Q. I'm asking you based on your
11 recollection, sir.

12 A. I don't recall where it came from.

13 Q. Do you recall asking any lawyer where
14 it came from?

15 A. That's why I was trying to refer to the
16 declaration because under my exhibit list it
17 should show what history I know about the
18 documents.

19 Q. Well, wouldn't it be important to know
20 where that Street Fax contract came from in
21 assessing its effect on the authenticity of the
22 Work For Hire contract?

23 A. It's hard to answer your question.

24 If you're asking me to rely on one side
25 of a disputed document's recollection, no, I'm

1 L. Stewart

2 not going to rely on that.

3 If you're asking me to look at the
4 document and analyze it forensically, then it
5 makes no difference where it came from.

6 Q. If you knew that the Street Fax
7 contract had been sent by e-mail from Paul Ceglia
8 to another individual back in 2004, would that
9 affect your opinion regarding the authenticity of
10 the Work For Hire contract?

11 A. No. I don't see why it would.

12 Q. You are not offering any expert opinion
13 on the authenticity of the Street Fax contract,
14 are you?

15 A. No, I'm not.

16 Q. And you're not offering any opinion on
17 whether Mr. Ceglia had the Street Fax contract on
18 his computer in 2004?

19 A. No, that's not my expertise.

20 Q. And you're not offering any opinion as
21 to who specifically sent an e-mail attaching the
22 Street Fax contract in 2004; correct?

23 A. No. I don't know the history of the
24 document.

25 Q. And you understand that Mr. Ceglia has

1 L. Stewart

2 submitted the Work For Hire contract as the
3 authentic contract between the parties; correct?

4 A. Yes.

5 Q. And you're not offering an opinion that
6 the Work For Hire document is the authentic
7 contract signed by the parties in 2004, are you?

8 A. I think to be accurate we need to read
9 exactly what my opinion is.

10 Q. Am I correct that you are offering an
11 opinion that there's no indication to suggest
12 that the document is a fraud but not offering an
13 opinion that it is the authentic contract
14 actually signed by the parties in 2004?

15 A. That's a fair assessment, yes.

16 Q. Are you aware that Mr. Ceglia quoted or
17 referenced purported e-mails in an amended
18 complaint he filed in this case supposedly
19 corroborating the authenticity of the Work For
20 Hire document?

21 A. No.

22 Q. Are you aware that it's defendants'
23 position that these purported e-mails quoted in
24 the amended complaint are fabricated?

25 A. No.

1 L. Stewart

2 Q. So to be clear, you are offering no
3 expert opinion as to whether or not e-mails
4 quoted in the amended complaint are real or fake?

5 A. That's correct.

6 Q. Are you aware of what spoliation means
7 in the context of a lawsuit?

8 A. There's a forensic meaning and there's
9 a legal meaning. I do not know the legal
10 meaning, I know the forensic meaning.

11 Q. In your quarter of a century or more of
12 employment by the United States Government are
13 you familiar with the concept that consciousness
14 of guilt can be established by an individual's
15 destruction of evidence?

16 A. No, I am not aware of that.

17 Q. Are you aware that in this case USB
18 devices containing relevant evidence were
19 destroyed or otherwise disposed of by the
20 plaintiff or others working in concert with him?

21 A. No, I'm not aware of that.

22 Q. If you learned, sir, that USB devices
23 existed in Mr. Ceglia's possession and control
24 during the course of this lawsuit that contained
25 images of the so-called --

1 L. Stewart

2 MR. SNYDER: Withdrawn.

3 Q. -- images of a contract between
4 Mr. Ceglia and Mr. Zuckerberg, but those USB
5 devices no longer exist and cannot be produced by
6 Mr. Ceglia, would that concern you?

7 A. Only if it's the Work For Hire document
8 and it's different than the document I already
9 had in front of me.

10 Q. Now, you understand that it's
11 defendants' position that when Mr. Argentieri
12 produced the Work For Hire document on the
13 morning of July 14, 2011, when none of
14 plaintiff's experts were present, the document
15 was already damaged?

16 You know that's our position; correct?

17 A. That's your position, yes.

18 Q. And that the ink was faded and the
19 paper was discolored?

20 A. Yes.

21 Q. Are you aware that Mr. Southwell was
22 present during that examination?

23 A. I believe I saw him on the videotape,
24 but I'm not positive.

25 Q. Are you aware that Ms. Aycock was

1 L. Stewart

2 present?

3 A. I believe I saw her as well.

4 Q. And are you aware that the former
5 United States Attorney for the Western District
6 of New York was present on the 15th on the
7 defense side?

8 A. No, I don't -- I saw people there, but
9 I didn't recognize them. I recognized these two
10 because they were present in Chicago as well.

11 Q. And you understand that it's defendants'
12 position that this degradation or damage to the
13 document was done sometime after its production
14 to Mr. Ceglia's former expert Dr. Valery Aginsky
15 on January 15, 2011?

16 A. I understand that's your position, yes.

17 Q. And do you understand that a factual
18 basis for this position is the scan of the Work
19 For Hire document taken by Dr. Aginsky in January
20 of 2011?

21 A. I understand that his document was
22 scanned on that date, yes.

23 Q. And you understand that another factual
24 basis for this position is Dr. Aginsky's
25 statements in his June 2011 declaration

1 L. Stewart

2 describing the appearance of the ink on the
3 handwritten interlineation as black ballpoint ink?

4 A. He did describe it that way, yes.

5 Q. And you cannot testify under oath here
6 to this court today, sir, can you, that plaintiff
7 presented his then expert Dr. Aginsky with the
8 same paper document as he produced to defendants'
9 experts in July of 2011, can you?

10 A. You mean to the chain of custody,
11 whether it's the exact same document, no, I
12 cannot.

13 Q. So it is possible, sir, that the
14 plaintiff or his lawyers gave Dr. Aginsky one
15 document and gave defendants' experts on July
16 14th a different document in July of 2011?

17 A. No, I do not believe so.

18 Q. But you don't know what document was
19 given to Dr. Aginsky because you weren't there?

20 A. No. I'm basing that on the scanned
21 image that he took and the alignment of the
22 interlineation between that and the document we
23 have today.

24 Q. You understand that it's defendants'
25 position that the testing performed by

1 L. Stewart

2 defendants' experts did not cause any damage to
3 the Work For Hire document?

4 A. I understand that's your position, yes.

5 Q. So just to be clear about what your
6 actual opinions are on these issues and the
7 factual basis of your opinions, I just want to
8 ask you a couple of questions.

9 Is it your opinion that when the Work
10 For Hire document was presented to defendants'
11 experts on the morning of July 14th outside the
12 presence of any of plaintiff's experts, it was
13 undamaged other than the normal wear and tear
14 associated with an eight-year-old document?

15 A. I can't attest to that because I was
16 not there. I can only go by the evidence that
17 your side has produced which is the videotape and
18 also the images taken by Mr. Tytell and the notes
19 that were taken by the experts.

20 Q. It is your opinion that the ink was
21 black when it was presented to the defendants at
22 9:11 a.m. on July 14, 2011?

23 A. That's not my opinion. The evidence
24 speaks for itself.

25 Q. You have no idea, sir, what the color

1 L. Stewart

2 of the ink was on the original document at 9:11
3 a.m. on July 14th, do you, sir, because you
4 weren't there?

5 A. No. All I have are the notes from your
6 experts and the video and the images.

7 Q. The notes of our expert indicate that
8 the ink was faded the minute that Mr. Argentieri
9 took it out of his envelope; correct?

10 A. No. Mr. Tytell's notes don't indicate
11 that till later on.

12 Q. You have read Mr. Tytell's report,
13 though?

14 A. Right.

15 Q. And what is his position about the
16 color of the ink on the 14th?

17 A. I believe he said, and I am
18 characterizing because I don't have it in front
19 of me, that he immediately noticed. However,
20 that's different than his notes.

21 Q. You have no opinion that the ink was --
22 MR. SNYDER: Withdrawn.

23 Q. So it's not your opinion that the ink
24 was --

25 MR. SNYDER: Withdrawn.

1 L. Stewart

2 Q. Am I correct that your report does not
3 talk about the condition of the ink when it was
4 presented to our experts at 9:11 a.m.?

5 A. I believe there are components of my
6 report that do address that, but, again, that's
7 based on the notes, the videotape and the images
8 taken by your experts.

9 Q. Let's look at the videotape and tell us
10 what on the videotape enables you to conclude
11 that the ink on page 1 of the document presented
12 for inspection was not faded and discolored.

13 So let me direct your attention to
14 the --

15 A. I don't know that I can do that
16 component from the videotape.

17 Q. Let's look at the videotape.

18 MR. SNYDER: Let the record reflect
19 that we are projecting on the screen from
20 the video embedded in document 189 -- my
21 team wants me to do this a little bit later,
22 so let's hold the video.

23 Q. So is it your opinion that the ink
24 coloration on the morning of July 14th, 2011 was
25 the same as it did in Dr. Aginsky's scans taken

1 L. Stewart

2 in January of 2011?

3 A. No, that's not my opinion.

4 Q. Do you have any opinion about how the
5 ink differed between the time Mr. Aginsky
6 photographed the document and the time it was
7 taken out of the envelope at 9:11 a.m. by
8 Mr. Argentieri?

9 MR. SNYDER: Let the record reflect
10 that the witness is reviewing his report.

11 A. I believe, to answer your question,
12 there is nothing in my report that describes the
13 appearance of the ink when it was first viewed on
14 the videotape.

15 Q. So you have no expert opinion about
16 what the ink looked like on the Work For Hire
17 document when Mr. Argentieri removed it from an
18 envelope at 9:11 a.m. on July 14th; correct?

19 A. No. I only have the first scan that
20 was taken by your experts which was shortly after
21 that.

22 Q. So you keep on talking about
23 Dr. Tytell's -- Mr. Tytell's notes.

24 Tell us about those notes, sir.

25 A. Let me get to that portion of my

1 L. Stewart

2 document.

3 I misstated this a moment ago. I
4 think, I believe I stated that Mr. Tytell
5 indicated that he immediately saw discoloration,
6 and based on my report here on paragraph 123 it
7 shows Lesnevich stated he immediately saw the
8 documents were discolored and he made high
9 resolution scans. I then compared that against
10 the scans that Mr. Tytell took and noted that
11 there is a difference.

12 Q. Sir, you told this court repeatedly
13 this afternoon that you based your opinion about
14 the ink on three pieces of evidence: Mr. Tytell's
15 notes, the video, and images that were taken at
16 9:11 a.m. So I'm asking you about the notes.

17 What notes did you base that opinion on?

18 A. The only notes that I have been
19 provided to date are those that were included in
20 the reports or declarations that were issued by
21 your experts back, I believe, in March.

22 Q. Sir, can you -- do you recall
23 Dr. Tytell saying that he immediately noticed
24 that the ink was faded in his report?

25 A. No. My report indicated Mr. Lesnevich

1 L. Stewart

2 stated that --

3 Q. Do you recall whether Mr. Tytell did as
4 well?

5 A. No. If we have his document I can read
6 it. I don't have it with me.

7 Q. Were you telling the truth when you
8 said that you reviewed Mr. Tytell's notes?

9 A. Yes. Everything that was included in
10 the reports by all the experts I reviewed.

11 Q. Were you telling the truth when you
12 told the Court that you reviewed Dr. Tytell's
13 notes? Not his report, his notes.

14 MR. BOLAND: Objection. There is no
15 reason to raise your voice, Mr. Snyder.

16 MR. SNYDER: I am not raising my voice.
17 I emphasize because I can't use a bold or
18 underscore the word "notes."

19 A. We may have a different definition.

20 I am referring to as notes everything
21 included in his report as attachments of things
22 that he did during his examination. I had that
23 for a number of the experts and I reviewed all of
24 that.

25 MR. SNYDER: Can we please go back, Mr.

1 L. Stewart

2 Court Reporter to -- I know your name -- to
3 where he testified about handwritten notes
4 of Mr. Tytell being different than the
5 report, I need to go back to that question.

6 (Record read.)

7 Q. You testified, sir, that Mr. Tytell's
8 notes don't indicate that he noticed the faded
9 ink until later on, that was your testimony here
10 today.

11 Can you explain what you meant by that?

12 A. Certainly. I thought I already had.

13 When I referred to my documents
14 directly I corrected that and said that it
15 appears that it was Mr. Lesnevich that I was
16 referring to.

17 As far as Mr. Tytell's notes, I only
18 have what was provided in the March declaration
19 reports.

20 Q. You testified under oath here today
21 that you reviewed notes that Mr. Lesnevich took
22 during the course of the examination?

23 A. I can tell you exactly what I reviewed.

24 Referring to Mr. Tytell's document
25 number 238, that document has included with it

1 L. Stewart

2 whatever you guys submitted through that document
3 as exhibits and that included some of the
4 documentation and scanned images, so I'm
5 referring to all of that as his notes.

6 Q. Are you aware that Mr. Tytell's report
7 submitted in this case states that it was
8 immediately apparent that the ink was faded brown
9 or light tan, almost transparent in some places?

10 Do you recall that?

11 A. That's what his report states, yes.

12 Q. And are you aware that Mr. Tytell's
13 report states that immediately noticeable was the
14 appearance of the writing ink on the document?

15 A. That's what his report, it's
16 contradicting the other expert in the case on
17 your side.

18 Q. Which expert?

19 A. I believe it's Lesnevich, I already
20 referred to that in my report.

21 Q. Sir, you are aware that Tytell states
22 that surprising to him was that the ink was light
23 tan or faded brown, not at all the kind of
24 appearance that I would expect for black
25 ballpoint ink after eight years, and in total

1 L. Stewart

2 accord was Mr. Tytell who said immediately
3 apparent that the ink of all of the handwriting
4 material was a faded brown, almost transparent.

5 Are you aware of that, sir?

6 A. I'm not -- I'm assuming you are reading
7 it correctly, so yes, I am aware of that.

8 Q. And are you aware Mr. Lesnevich came to
9 a contrary conclusion in his report?

10 A. I already referred to that earlier
11 today; I'll find it again and refer to it again
12 if you give me a moment.

13 Q. Are you aware that Mr. Lesnevich was
14 not even present at the inspection on July 14th,
15 sir?

16 A. I'm still trying to answer your
17 previous question.

18 MR. SNYDER: Withdraw the last
19 question.

20 Q. You'd agree that if Mr. Lesnevich was
21 not there on the 14th he couldn't offer an
22 opinion what about he saw firsthand on the 14th
23 when the document was removed from the envelope;
24 correct?

25 A. That would make sense. That's why I'm

1 L. Stewart

2 trying to refer to my notes and my report so I
3 can give you the accurate information. You keep
4 stopping me.

5 Q. Why don't you tell the Court right now
6 which expert from the defense side contradicted
7 Tytell's and Romano's sworn statements that upon
8 visual inspection of the document at 9:11 a.m. on
9 the 14th they were surprised to see that the ink
10 was faded?

11 A. I will try to do that again. If I can
12 finish this time, then I'll give you the answer.

13 I'll correct things as we go by reading
14 this.

15 I was there in Buffalo July 16th
16 through the 19th.

17 I refer to the time in the video of one
18 minute and 14 seconds to one minute and 17
19 seconds.

20 Q. Sir, I'm asking you a simple question.

21 You said that one of our experts
22 contradicted our other experts about the color of
23 the ink when it was taken out of the envelope by
24 Mr. Argentieri at 9:11 a.m.

25 Which defense expert contradicted the

1 L. Stewart

2 statements of Romano and Tytell that upon
3 immediately inspecting the document visually at
4 9:11 a.m. they saw discolored, faded ink?

5 A. I'm trying to answer that for you, if I
6 can continue.

7 MR. SNYDER: Let the record reflect
8 that the witness has been reviewing his
9 declaration for the past several minutes,
10 the video will determine exactly how long.

11 A. I have 388 pages, so it may take me a
12 while.

13 Q. Well, you made a very serious charge
14 there, sir, and I'm asking you to tell the Court
15 what you base that testimony on.

16 A. I'm trying to.

17 MR. BOLAND: And the record should
18 reflect he is answering your question,
19 attempting to answer your question, and it
20 is taking this effort he is engaged in to do
21 that.

22 A. I begin discussing what we're talking
23 about here on my paragraph number 119.

24 Q. Sir, I'm asking you a very specific
25 question.

1 L. Stewart

2 You testified here to the Court that
3 Lesnevich and then later you said an expert
4 contradicted Romano's and Tytell's observation
5 that immediately noticeable at 9:11 a.m. on July
6 14th was the faded discolored appearance of the
7 writing ink on the document.

8 I'm asking you now to tell the Court on
9 what did you base that testimony.

10 A. I'm trying to and you keep stopping me.
11 I am back to 119 where it begins and that over
12 the next few paragraphs, many paragraphs,
13 discusses it.

14 As I mentioned before -- well, I'm not
15 going to be taken out of context again.

16 What I'd like to do is read that whole
17 segment into the --

18 Q. No, sir, I am not asking you to read
19 your report into the record.

20 A. Then I can't answer your question.

21 Q. Sir, you're going to answer my
22 question, so here's the question:

23 You told this court that Mr. Lesnevich
24 contradicted Tytell and Romano in their opinion
25 that the ink was discolored and faded at 9:11

1 L. Stewart

2 a.m. on the 14th.

3 What did you base that testimony about
4 Mr. Lesnevich on?

5 A. First, I didn't say any of that about
6 9:11 or any of that, those are all your words.

7 I'm trying to read to you all my
8 findings concerning that which discusses exactly
9 what I found and what I can talk about. I can't
10 talk about anything else out of the scope of my
11 report.

12 Q. Tell the Court the name of the expert
13 who contradicted our other experts, the name.

14 A. Okay. I will start reading --

15 Q. No, sir, I am not asking you to read
16 your report.

17 MR. BOLAND: Objection.

18 Q. I'm asking you to give the name, first
19 and last name of the expert who you said under
20 oath in this deposition today contradicted other
21 defense experts about the color of the ink.

22 A. Okay.

23 We will start with Lesnevich, who
24 stated he immediately saw the documents were
25 discolored at 9:00 a.m., not 9:11 on 7/15/11.

1 L. Stewart

2 Q. We are talking about the 14th, sir,
3 July 14th, sir.

4 A. I can only go by the images and the
5 material that was passed on by you to me.

6 Q. Sir, what day was the document first
7 examined by Mr. Tytell and Mr. Romano?

8 A. I believe it was on the 14th.

9 Q. And are you aware that Mr. Lesnevich
10 did not examine the document until the 15th and
11 was not present physically in Buffalo, New York
12 on the 14th?

13 A. That's correct, he first examined it on
14 7/15 at 9:00 a.m.

15 Q. So tell the Court which expert who
16 examined the document on July 14th contradicted
17 defense experts about the color of the ink as you
18 just testified?

19 A. With your scope you can't do that. The
20 contradiction occurs on the 15th.

21 Q. Are you aware that Mr. Lesnevich states
22 in his declaration submitted on November 28, 2011
23 in this case that when I was first presented with
24 the document at approximately 9:00 a.m. on the
25 15th it was clear that the integrity of the

1 L. Stewart

2 document was already severely degraded, the paper
3 had a discolored appearance and the writing pen
4 ink was very faint?

5 A. That's correct, and that's what I'm
6 referring to when he says he immediately saw the
7 documents were discolored.

8 Q. The day after Tytell and Romano made
9 the same observation.

10 A. They didn't make that same observation
11 the day before.

12 Q. Sir, I will show you the reports of
13 Mr. Tytell and Mr. Romano, if you like, and read
14 for you where they make the exact same finding.

15 Do I need to do that to refresh your
16 memory?

17 A. I don't need the report, I've got their
18 scanned images, and the scanned images are very
19 telling.

20 Q. So in fact, sir, none of the expert
21 opinions offered by the defendants contradicted
22 one another with respect to the color of the ink;
23 correct?

24 A. No, that's completely wrong. Their own
25 images contradict each other.

1 L. Stewart

2 MR. SNYDER: The record will speak for
3 itself.

4 Q. Did you rely at all on Mr. Argentieri's
5 declaration with regard to any opinion you are
6 rendering about the color of the ink?

7 A. No. I'm not even aware that he did a
8 declaration.

9 Q. Did you read a declaration submitted by
10 the videographer present who took the images,
11 Mr. Gianatto (phonetic)?

12 A. Yes, I believe I did read that.

13 Q. And were you relying on Mr. Gianatto's
14 statements at all in forming your expert opinion?

15 A. No, not at all.

16 Q. So just for the record, what is your
17 opinion, if any, about the color of the ink at
18 9:11 a.m. on July 14th, 2011? Was it faded?

19 A. At 9:00 a.m. --

20 Q. 9:11 a.m. on July 14, 2011.

21 A. I'm not hard of hearing, I'm right here.

22 At 9:11, I don't know exactly what the
23 appearance was, I can only go by the video
24 scanned images that were submitted to me and the
25 date stamps that are on them.

1 L. Stewart

2 I know that if we looked at Mr.
3 Tytell's initial scan from July 14th it is white
4 and clear and if you look at the yellowing on
5 Mr. Lesnevich from the day next, the next day,
6 it's completely different.

7 Q. I'm talking about the ink handwritten
8 interlineation on page 1 on July 14th, 9:11.

9 Was it faded when it was presented at
10 9:11 a.m., the ink?

11 A. We can't tell that from the cropped
12 image that you guys produced, we can only tell
13 that the document itself was faded and changed.

14 Q. The image in your report, though, that
15 you present is cropped by you and you cropped out
16 the handwritten portion; correct?

17 A. This -- you're looking at what I've got
18 in my report. I don't know if I have for that
19 image what the entire scan was.

20 Q. I'm going to show you a scan taken by
21 Mr. Tytell and ask you to look at it, please.

22 We'll give you as the next exhibit, 22,
23 which is Exhibit F to our motion and it's the
24 report of Peter Tytell.

25 (Defendants' Exhibit 22, one-page

1 L. Stewart

2 document labeled "Exhibit F" with attached
3 report by Peter V. Tytell dated March 25,
4 2012, marked for identification, as of this
5 date.)

6 Q. I will direct your attention to his
7 scan, which is Exhibit A to his report.

8 And you would agree, would you not,
9 that the ink, the writing pen ink on this scan
10 has an appearance that is faint or faded as
11 opposed to a dark ballpoint pen; correct?

12 A. Yes, the entire document is miscolored.

13 Q. Thank you.

14 A. But to correct your incorrect
15 statement, you just mentioned this is document
16 330 and I'm referring to document 238-2, which is
17 visibly white.

18 The one you're showing me is visibly
19 orangeish-brown and I referred to the scanned
20 image, the best TIFF image available, not a
21 document that's been produced so many times on a
22 photocopier, so I don't know what you want me to
23 talk about with your document, I can only go on
24 the best evidence which is my scan of 238-2.

25 Q. Are you telling the Court under oath

1 L. Stewart

2 today that Mr. Tytell has some scan that he took
3 at 9:11 a.m. that's different than the scan that
4 you are looking at as Exhibit A, sir?

5 A. Yes. This is an unmanipulated scan
6 directly from the image that was submitted to me,
7 document 238-2, which is completely white,
8 compared to the document you are showing me with
9 document 330.

10 Q. And what is the color of the ink on
11 238-2?

12 A. I don't know. I've got a cropped image
13 here.

14 Q. Who cropped that image?

15 A. I don't -- it could have been me, I
16 could have the full thing in the back here or it
17 could have been when it was submitted to me. I
18 will have to check. It is part of --

19 Q. We are going to get 238-2 in a minute
20 and show it to you.

21 So since you can't see the handwritten
22 interlineation on the cropped image that you have
23 in your report you can't point to a single
24 document of an image taken at 9:11 on July 14th
25 that has ink that is not discolored, can you?

1 L. Stewart

2 A. I can only assume that with this much
3 difference between the white and the yellow
4 document there's been some discoloration, but I
5 cannot point to it, I can only go by your own
6 images.

7 Q. Now, it's your opinion that the Work
8 For Hire document's paper was white when it was
9 presented to defendants' experts on the morning
10 of July 14th; correct?

11 A. Not in my opinion. It's Mr. Tytell and
12 what he submitted here. It's Tytell Exhibit B,
13 document 238-2, it's white.

14 Q. Sir, are you aware that Dr. Tytell says
15 something to the contrary in his report, namely
16 that the document was not white, it was
17 discolored?

18 A. That's part of the contradiction I'm
19 talking about.

20 Q. So you are aware that Mr. Tytell in
21 fact has asserted under oath that he observed
22 that the document was light tan or faded brown?

23 A. Which corresponds with your document
24 330, but it does not correspond with the document
25 238-2.

1 L. Stewart

2 MR. SNYDER: We are going to take a
3 break and get that document.

4 THE VIDEOGRAPHER: Going off the
5 record. The time is 1:43.

6 (Recess taken.)

7 THE VIDEOGRAPHER: We are back on the
8 record. The time is 1:53.

9 MR. SNYDER: I'm going to mark as
10 Defendants' 23 the declaration of Peter
11 Tytell dated November 28, 2011, document 238
12 on the docket.

13 (Defendants' Exhibit 23, declaration of
14 Peter Tytell dated November 28, 2011, marked
15 for identification, as of this date.)

16 BY MR. SNYDER:

17 Q. I'm going to hand that to you.

18 Let me direct your attention first to
19 paragraph 29 of Mr. Tytell's declaration.

20 Do you recall this illustration where
21 Mr. Tytell compares an image of the handwriting
22 on page 1 of the Work For Hire document taken
23 from the scanned image of page 1 from Dr. Aginsky
24 in January 2011 with a similar portion of the
25 scanned image at page 1 that he made at 9:18 a.m.

1 L. Stewart

2 on July 14, 2011?

3 A. Yes.

4 Q. And do you recall that the condition of
5 the handwriting appears markedly different in the
6 two scans?

7 A. Yes.

8 Q. Now, you said that you have a cropped
9 image of 238-2 and that was a document you were
10 relying on in providing your expert testimony, so
11 I'm going to direct your attention now to 238-2.
12 If you go toward the back of Mr. Tytell's
13 declaration you'll see his scanned image of the
14 Work For Hire contract that he took immediately
15 after Mr. Argentieri removed the document from
16 the envelope in the Harris Beach offices on July
17 14th, 2011.

18 Do you see the condition of the
19 handwriting ink on page 1 of that scan?

20 A. Yes.

21 Q. How would you describe it?

22 A. It appears faded and the document
23 appears brownish.

24 Q. You would agree that the appearance of
25 the ink at 9:18 a.m. on July 14, 2011 is markedly

1 L. Stewart

2 dissimilar from the appearance of the ink that
3 Dr. Aginsky photographed earlier in the year?

4 A. Yes.

5 Q. And you are offering no expert
6 opinion --

7 MR. SNYDER: Withdrawn.

8 Q. You are offering no expert opinion,
9 sir, are you, about what happened to this
10 document between 1/13/11 when Dr. Aginsky
11 photographed it and 9:11 a.m. when Mr. Argentieri
12 appeared at the offices of Harris Beach with the
13 document in a Redweld?

14 A. He says that's on the 14th.

15 No, I'm not reaching any conclusion
16 between Aginsky and the 14th.

17 Q. And did you ask Mr. Ceglia or
18 Mr. Argentieri what if anything they did to the
19 document between January 2011 and July 14, 2011
20 to cause the handwritten ink to become faded?

21 A. No, of course I didn't ask them that.

22 Based on the scanned images of your
23 experts, the fading occurred between the 14th and
24 the 15th.

25 Q. Sir, are you aware that the scan that

1 L. Stewart

2 you just identified as discolored, faded ink was
3 taken by Mr. Tytell just six and a half minutes
4 after -- or less, after Mr. Argentieri removed it
5 and placed it on the table before any testing was
6 done, any lights were used or anything was done
7 to the document other than it being laid on a
8 table by the lawyer?

9 A. I am not aware of when this image was
10 taken, I am only aware of the meta tags that are
11 on the images that were submitted and those meta
12 tags indicate that the image produced by Tytell
13 on the 14th was quite a bit whiter than this
14 document that you produced on a 400-dot-per-inch
15 copier.

16 I'm going on a mini megabyte image that
17 is a TIFF image and I imagine my image is clearer
18 than yours. There has been no change to the
19 image and you can see in the report that it's
20 white when Tytell did it and it's yellow when
21 Lesnevich did it the day after.

22 Q. I'm talking about the ink, sir.

23 A. I'm talking about the document.

24 Q. I'm talking about the ink, sir.

25 A. You are showing me a brown document

1 L. Stewart

2 that doesn't match anything that I was provided.

3 Q. Sir, were you provided with Dr. Tytell's
4 scan?

5 A. Mr. Tytell's --

6 Q. Were you provided with Dr. Tytell's
7 scan?

8 A. I don't know a Dr. Tytell, I know a
9 Mr. Tytell and --

10 Q. Mr. Tytell's scan is before you in
11 238-2; correct?

12 A. No. What's before me is your printing
13 of a document. I was provided the actual
14 document that was filed with the Court and in
15 there are scanned images that I used.

16 Q. Sir, I just handed you the document
17 that was filed with the Court by Mr. Tytell.

18 A. No. You handed me a photocopied
19 version of the file.

20 Q. Mr. Tytell testified under oath, swore
21 under oath that this image was taken at 9:18 a.m.
22 on July 14th.

23 Do you have any reason to think that
24 Mr. Tytell is not telling the truth?

25 A. No, not at all.

1 L. Stewart

2 Q. And do you see that the image that he
3 took at 9:18 a.m. shows a discolored faded ink?

4 A. It's discolored along with the entire
5 document.

6 Q. What is your opinion about what
7 happened to the ink between the time that
8 Mr. Argentieri took it out of the envelope and
9 the time that Mr. Tytell photographed it minutes
10 later to cause it to become faded?

11 A. When Mr. Argentieri took it out of the
12 envelope on the 14th the scanned images appear
13 white, when he took it out on the 15th they
14 appear yellow.

15 Q. Point to a document in the record, sir,
16 that shows the condition of the ink being bold
17 minutes after Mr. Argentieri took it out of the
18 envelope.

19 A. Again, my images are of the entire
20 document, not strictly the ink, so I don't have
21 an image like that.

22 Q. Show me an image in your report that
23 shows the condition of the ink being bold on July
24 14th, 2011.

25 A. I think I just told you I have got a

1 L. Stewart

2 different segment of a document scanned in here.

3 Q. You mean because you cropped the
4 document in your report to eliminate the
5 appearance of the ink; right, sir?

6 A. Why would I do that? I've got the
7 white versus yellow document right here, it
8 doesn't matter if I include the ink or not, and I
9 have the scanned images, it's just not in this
10 report.

11 Q. Where is it, sir?

12 A. In the images that I provided to you in
13 discovery back in November.

14 Q. Is it your testimony, sir, under oath
15 here today before this court on the video camera
16 that you saw a version of document 238-2 filed by
17 Mr. Tytell which bears handwriting ink on page 1
18 in bold pen? Is that your sworn testimony here
19 today?

20 A. No, it's not. I have shown you that I
21 don't have the image of the ink there, I only
22 have the top of the document shown there.

23 Q. Have you ever seen any version of
24 Mr. Tytell's scan from July 14, 2011 that has
25 bold handwriting ink on the first page?

1 L. Stewart

2 A. I don't know. I've got those images
3 and you've got them as well, so I don't know.

4 Q. Isn't it a fact that every single scan
5 that Mr. Tytell has produced from the 14th is
6 consistent with his visual finding that the ink
7 on page 1 was noticeably faded and not bold as it
8 was when Mr. Aginsky took the scan in January?

9 A. I don't know about that particular
10 scope of your statement, I don't know about the
11 ink part. I'm talking about the document itself
12 being white or yellow.

13 Q. You are talking about the color of the
14 document, not the condition of the ink; correct?

15 A. At this point, yes.

16 Q. So you are offering no opinion here
17 today, sir, about the condition or color of the
18 ink on page 1 as it appeared when Mr. Argentieri
19 took it out of the envelope and put it on the
20 table?

21 A. No, I can't opine about that.

22 Q. Now, as we've discussed, defendants'
23 examination began on the morning of July 14,
24 2011; correct?

25 A. Correct.

1 L. Stewart

2 Q. And you weren't there, but you've
3 reviewed the video of that day of examination;
4 correct?

5 A. Correct.

6 Q. So you are aware, then, that at 9:11
7 a.m. Paul Argentieri removed the Work For Hire
8 document and the specifications document from a
9 United States Postal Service envelope?

10 A. I don't know the exact time, but I'm
11 aware that he removed it.

12 Q. Are you aware that he then placed those
13 documents on the black conference room table?

14 A. It's kind of black.

15 Q. Did he place them face up or face down?

16 A. I believe he placed them face up.

17 Q. And how do you know that?

18 A. My recollection.

19 Q. Recollection of what?

20 A. The videotape.

21 Q. And you rely on the video for your
22 opinion about the appearance of the Work For Hire
23 document when it was first produced to the
24 defendants' experts; correct?

25 A. In part, yes.

1 L. Stewart

2 Q. As an expert, would you rely on the
3 visual observations of Mr. Tytell as being valid,
4 meaning Mr. Tytell, you know, said he immediately
5 noticed that the paper was discolored and the ink
6 was faded?

7 Do you think Mr. Tytell was telling the
8 truth when he notes his immediate observations?

9 A. I don't know. I mean, I assume
10 Mr. Tytell is an honest person.

11 Q. And you are relying on the video in
12 your report; correct?

13 A. Video and scanned images, yes.

14 Q. And prior to making your report you
15 reviewed the video clip; correct?

16 A. Yes.

17 Q. And let's look at the video clip in the
18 brief. We will look at the one embedded in the
19 plaintiff's motions for sanctions, which is
20 document number 189.

21 So am I correct, sir, that you are
22 crediting -- you are disagreeing with
23 Mr. Tytell's visual inspection and conclusions --

24 MR. SNYDER: Withdrawn.

25 Q. You're disagreeing with Mr. Tytell's

1 L. Stewart

2 opinion that the document was discolored, which
3 he bases on his visual inspection, based on your
4 review of the video; is that correct?

5 A. No, not at all.

6 Mr. Tytell's initial observations were,
7 I believe, that it was a tanned document or it
8 had some coloration to it. I don't know if that
9 is halfway between white and yellow, I don't know
10 where it occurred, all I know is that he made
11 that observation and that he scanned in the
12 document and now I am relying at that point on
13 the scanned image.

14 Q. He also concluded, which you are
15 opining on, that the ink was discolored; correct?

16 A. I don't know if he said discolored,
17 faded or what, I don't recall his exact words at
18 this time.

19 MR. SNYDER: Let's look at the video.

20 (The video file was played.)

21 Q. So Mr. Argentieri is opening the
22 envelope, is he not?

23 A. Yes.

24 Q. And he is removing what appear to be
25 two U.S. Postal Service envelopes that are in the

1 L. Stewart

2 larger envelope and he is opening one; correct?

3 A. Correct.

4 MR. BOLAND: Can you just reiterate
5 what document this is coming from for the
6 record?

7 MR. SNYDER: I will in a moment.

8 MR. BOLAND: Very well.

9 Q. And now he's removing something from
10 the envelope; correct?

11 A. Not yet, but --

12 Q. He is about to, it is 9:11:40, okay?

13 A. Yes.

14 Q. And he's put two pages down.

15 MR. SNYDER: Can you freeze it there,
16 please.

17 Q. Can you tell me, do you see the title
18 "Work For Hire Contract" on either of those
19 pieces of paper based on the video at 9:11:51?

20 A. No.

21 Q. Can you tell me which piece of paper is
22 page 1 and which is page 2?

23 A. No.

24 Q. Can you show me where the handwritten
25 interlineations are on this video still?

1 L. Stewart

2 A. Of course not, I can't tell you which
3 one is page 1 or page 2.

4 Q. Can you show me where the signature of
5 Mark Zuckerberg and Paul Ceglia are in this?

6 A. Same answer as before.

7 Q. You can't see any text on either of
8 those pages based on the video, can you?

9 A. No.

10 Q. You can't see any ink, can you?

11 A. No. I can see what appears to be
12 little lines on it, but I can't tell what's ink
13 and what's printed.

14 Q. And to the naked eye these could be
15 blank documents as well as text-laden documents;
16 correct?

17 A. No, I don't think so. I see little
18 lines where printing appears to be.

19 Q. But you can't see any distinct features
20 in these videos, whether it's signatures,
21 handwriting or content of any kind; correct?

22 MR. BOLAND: Objection.

23 A. From that stilled frame, no, I can't.

24 Q. And what's your factual basis for
25 asserting that the document is face up?

1 L. Stewart

2 A. When you look at the video in its
3 entirety I believe there's a segment where you
4 can see that it's placed face up.

5 Q. So you agree with me that on the video
6 the pages of the documents are so washed out at
7 the moment that they are produced and laid out on
8 the table that you cannot see the printed text;
9 correct?

10 A. No. As I testified before, I can see
11 subtle little lines there, I can't tell what's
12 printing and what's handwriting, and so in that
13 particular still image of the video I cannot make
14 it out.

15 Q. But it is this video that you're
16 relying on as the factual basis for your opinion
17 that Mr. Tytell's visual observation of the
18 document was invalid and that your conclusion
19 that the Work For Hire document was white when it
20 was produced is valid; is that correct?

21 A. No, I've never said that. I have no
22 reason to dispute his initial observation that he
23 was looking at a tanned document with discolored
24 ink. He had no comparison at that point and he
25 didn't know what it looked like before unless he

1 L. Stewart

2 had been shown scanned images, so I have no
3 reason to dispute that it was tanned at that
4 point.

5 Q. And you just said that Mr. Tytell
6 didn't know what it looked like before unless he
7 had been shown scanned images.

8 Was that your testimony?

9 A. Right. I think that's the first time
10 he saw the original document.

11 Q. But you know that he had high-quality
12 images taken by a very reputable forensic
13 examiner named Dr. Aginsky who provided us with
14 scans that showed the document not discolored and
15 the ink bold and dark; correct?

16 A. I don't know what Dr. Aginsky provided
17 Mr. Tytell.

18 Q. You know what Dr. Aginsky provided to
19 you; correct?

20 A. That's correct.

21 Q. And the document had a very distinctly
22 different appearance when he took a photograph of
23 it than when Mr. Tytell did on July 14th; correct?

24 A. That's correct, at that point it was
25 white with distinct ink.

1 L. Stewart

2 Q. Meaning in January?

3 A. Yes.

4 Q. And were you involved, sir, personally
5 in any way in putting together the video clip
6 that was uploaded onto YouTube that was a video
7 of the July 14th examination?

8 A. No.

9 Q. Are you aware that a YouTube clip was
10 uploaded onto YouTube?

11 MR. SNYDER: Withdrawn.

12 Q. Are you aware that a video clip of the
13 July 14th inspection was uploaded onto YouTube?

14 A. I'm aware there is a video clip online,
15 I'm not sure if it was YouTube or not.

16 Q. And you were not involved in its
17 creation or editing at all?

18 A. No.

19 MR. SNYDER: We are going let the court
20 reporter get some lunch and then we can
21 proceed whenever as we are all ready.

22 THE VIDEOGRAPHER: Going off the
23 record. The time is 2:13. This ends tape
24 number 3.

25 (Lunch recess: 2:13 p.m.)

1 L. Stewart

2 A F T E R N O O N S E S S I O N

3 (Time noted: 2:51 p.m.)

4 THE VIDEOGRAPHER: We are back on the
5 record. The time is 2:51. This is tape
6 number 4.

7 MR. SOUTHWELL: We are back on the
8 record in the afternoon for Mr. Stewart's
9 deposition. I just want to note the
10 appearance of Anna Chase, a summer associate
11 with our firm who is here.

12 MR. BOLAND: And for Mr. Southwell, I
13 just want to put on the record we are coming
14 back from a break that was made, I think
15 with the agreement of both parties, for the
16 benefit of the court reporter for
17 approximately 20 minutes and that the
18 videographer, the court reporter and the
19 witness and myself were back in this room at
20 2:30 promptly prepared to continue with the
21 deposition and it's now 2:52 and the defense
22 counsel is now back and ready to begin.

23 L A R R Y F. S T E W A R T, resumed and
24 testified as follows:

25 EXAMINATION BY

1 L. Stewart

2 MR. SOUTHWELL:

3 Q. Mr. Stewart, did you have any
4 conversations with Mr. Boland over the lunch
5 break about the substance of this case or the
6 deposition?

7 A. Not about the case. I talked about his
8 shoes and I talked to him about some software
9 that he's using.

10 Q. Did you discuss the substance of
11 deposition with Mr. Boland?

12 A. Not at all.

13 Q. You testified earlier about a
14 conversation you had with Mr. Ceglia concerning
15 some facts which you then say that you asked him
16 to put a declaration in to that effect.

17 Do you recall those questions and
18 answers?

19 A. Yes.

20 Q. And are you aware that he filed a
21 declaration on approximately June 4th of 2012?

22 A. Yes, I am.

23 Q. Your conversation with him was shortly
24 before that; is that right?

25 A. It was it was quite a bit before that.

1 L. Stewart

2 Q. Approximately when was that?

3 A. A few months before.

4 Q. A few months before he filed his
5 declaration on June 4th; is that what you are
6 saying?

7 A. I believe so, yes.

8 Q. So April of 2012, roughly in that time
9 frame?

10 A. I believe, if I recall correctly, it
11 was around end of March, beginning of April,
12 right after your experts filed reports.

13 Q. So if I told you that the defendants
14 experts filed their reports on March 26, 2012,
15 about how soon after that do you think it was
16 you had this conversation with Mr. Ceglia?

17 A. I believe we had a conference call with
18 them within two weeks, within a week or two weeks
19 of that time.

20 Q. And it was on that conference call that
21 you say Mr. Ceglia spoke for a couple of minutes
22 and provided his story about where the purported
23 Work For Hire document had been allegedly stored;
24 is that correct?

25 A. Correct.

1 L. Stewart

2 Q. You testified earlier that part of your
3 role was to oversee the plaintiff's experts and
4 that you did that with respect to Dr. Aginsky and
5 you said that you reviewed his report and
6 e-mails, I think is perhaps what you said.

7 What do you recall reviewing of
8 Mr. Aginsky's?

9 A. I don't recall any e-mails.

10 There was something that he produced, I
11 believe, back in June of 2011 that was filed in
12 the case and I recall reviewing that and I
13 believe that described his physical examination
14 of the document.

15 Q. If I were to tell you there is
16 declaration in the record filed on June 17, 2011
17 in relation to a motion for expedited discovery
18 by the defendants, does that sound like the
19 document that you were referring to that you
20 reviewed?

21 A. That sounds like the correct frame,
22 time frame.

23 Q. Was there anything else of
24 Dr. Aginsky's that you reviewed in your role as
25 overseeing the plaintiff's experts?

1 L. Stewart

2 A. I believe his images were provided as
3 the first images that were available and I
4 believe I got that from Mr. Argentieri.

5 Q. Those were his images of January 2011;
6 is that right?

7 A. I believe so.

8 Q. Now, you are not an expert in video or
9 film; correct?

10 A. No, I'm not.

11 Q. You are not an expert in forensic video
12 analysis; correct?

13 A. No.

14 Q. You are not a videographer?

15 A. No.

16 Q. Have you taken a course or seminar on
17 forensic video analysis from any law enforcement
18 association?

19 A. No.

20 Q. Ever taken a course or seminar in
21 forensic video analysis from the International
22 Association for Identification?

23 A. No.

24 Q. You don't have any specialized training
25 regarding film or video; correct?

1 L. Stewart

2 A. No.

3 Q. You personally didn't take video of the
4 inspection; correct?

5 A. That's correct.

6 Q. Do you know how it was recorded?

7 A. On a video camera with some kind of a
8 taping system, that's all I know.

9 Q. Do you know what the taping system was?

10 A. No.

11 Q. Do you know if the tape was ever edited
12 by the videographer?

13 A. No, I do not.

14 Q. Are you aware of the credentials of the
15 videographer?

16 A. No.

17 Q. Do you know whether the videographer
18 did anything to ensure the quality of the
19 recording?

20 A. No.

21 Q. Do you know if he set the white
22 balance?

23 A. No.

24 Q. Do you know if he used any additional
25 lighting?

1 L. Stewart

2 A. I believe he did not, but that's just
3 my recollection.

4 Q. Your recollection is that he used
5 whatever the office background lighting was;
6 correct?

7 A. That's correct.

8 Q. Are you aware of whether in Buffalo in
9 the conference room the shades were drawn or open?

10 A. No. I'd have to look at the videotape.

11 Q. You don't remember one way or the
12 other?

13 A. I don't recall, no.

14 Q. What about in the conference room in
15 the inspection that occurred in Chicago, do you
16 remember whether there were shades there?

17 A. I don't recall if they were left open
18 or not.

19 Q. If I were to tell you that in the
20 Buffalo conference room the shades were closed
21 and the lighting was mostly artificial
22 fluorescent lighting, would that refresh your
23 recollection?

24 A. No.

25 Q. And although you are not an expert in

1 L. Stewart

2 video analysis, you are aware, are you not, that
3 fluorescent lighting is different than natural
4 light particularly when it relates to sort of the
5 color temperatures and the appearance of things;
6 is that fair to say?

7 MR. BOLAND: Objection.

8 A. Yes, they're different.

9 Q. Mr. Stewart, are you familiar with VSC?

10 A. Yes.

11 Q. What is a VSC?

12 A. Video spectral comparator and it's an
13 acronym that many companies manufacture but one
14 in particular is famous for, a company named
15 Foster + Freeman.

16 Q. Do you know the difference between a
17 VSC 4, a VSC 40, a VSC 400 and VSC 2000?

18 A. I know some of the differences. I
19 don't have a spec sheet in front of me.

20 Q. Which kind do you personally own?

21 A. I own a VSC 2000 high-resolution HR.

22 Q. Where do you keep that?

23 A. In my office.

24 Q. Where?

25 A. In San Luis Obispo.

1 L. Stewart

2 Q. And when did you purchase that machine?

3 A. Sometime last year, I don't remember
4 the exact date.

5 Q. Last year as in the last calendar year?

6 A. Yes. I believe it was in early, maybe
7 sometime -- I don't even want to speculate, it
8 was sometime prior to this case, so it would have
9 been either early 2011 or late 2010.

10 Q. So prior to your involvement in the
11 case or prior to the inspection in the case?

12 A. Prior to my involvement in the case.

13 Q. How frequently do you use that in the
14 course of your work?

15 A. I use that weekly.

16 Q. Now, in paragraph 108 of your report
17 you state that there was a, quote, "potential
18 problem with the VSC unit on the first day of the
19 examination," and that was -- the nature of the
20 problem was unknown, right? You say that in your
21 report in paragraph 108?

22 A. That's not exactly what I say, but it's
23 discussing a potential problem there.

24 Q. And you didn't inquire into that
25 potential problem; correct?

1 L. Stewart

2 A. I don't know what you mean by inquire.
3 I wasn't allowed to talk to you guys.

4 Q. Did you ask anybody?

5 A. I pointed it out to the lawyers for
6 Mr. Ceglia's side.

7 Q. When did you do that?

8 A. As soon as I noticed that there was a
9 problem, that there --

10 Q. And when was that?

11 A. It would have been when we first
12 received the information from the experts from
13 the other side, which would have been, I believe,
14 October 2011 is when we first got any of their
15 declarations or any of their information.

16 Q. What information are you referring to
17 that you first received?

18 MR. SOUTHWELL: Let me strike that.

19 Q. You are not referring to when you got
20 the expert reports from the defendants' experts;
21 right?

22 A. No. In the early information one of
23 your experts referred to it as a different model
24 than the other, so either they were mistaken or
25 else there was a change in the machine.

1 L. Stewart

2 Q. I see.

3 And that's when you say that you
4 noticed this and pointed it out to the
5 plaintiff's lawyers?

6 A. Correct.

7 Q. And who did you tell that to?

8 A. At the time it would have been
9 Mr. Argentieri and I believe Mr. Lake.

10 Q. And in your expert report you also talk
11 about the possibility of paperweights being used
12 in a VSC machine during examination and that
13 those may have caused fluorescent tab marks;
14 right?

15 A. That's essentially what I said, yes.

16 Q. Did you see paperweights present at the
17 examination?

18 A. No. I was not allowed to go back there.

19 Q. My question is did you see them present
20 during the defense examination.

21 A. No, from my vantage point I couldn't
22 see them.

23 Q. When you say you weren't allowed to go
24 back there, was there a rope that cordoned you
25 off and you could only stay in one corner of the

1 L. Stewart

2 room?

3 A. I was given instruction in the
4 beginning that I was to stay back and was not
5 allowed to approach the document.

6 Q. You were not allowed to approach the
7 document?

8 A. Correct.

9 Q. So is it your testimony you never once
10 approached the document during the course of
11 defendants' examinations?

12 A. That's correct, I did not approach the
13 document until I did my examination.

14 Q. I remind you you are under oath today.
15 You are sure, your testimony is that you never
16 approached the document in the course of the
17 defendants' examination?

18 A. I do not recall approaching the
19 document. I recall the opposite, being told that
20 I cannot approach the document, and the first
21 time that I visually inspected the document was
22 when it was in front of me in Chicago.

23 I do not recall except from at least a
24 few feet away inspecting the document prior to
25 that.

1 L. Stewart

2 Q. So you're referring to an examination
3 or an inspection that you would be, in other
4 words, sitting in front of the document. You
5 acknowledge that you were a few feet away from
6 the document earlier than when you started your
7 examination; is that correct?

8 A. Yes, I was a few feet away from the
9 document.

10 Q. Okay.

11 So you could observe the document from
12 a few feet; correct?

13 A. Correct.

14 Q. And do you know the dimensions of the
15 paperweights that sometimes come with VSC units?

16 A. Not exactly. I recall them from the
17 time that I've used a VSC 4 and I believe that I
18 printed out a specification sheet from Foster +
19 Freeman that indicated the size of them, but I
20 don't have it in front of me.

21 Q. If I were to tell you that the Foster +
22 Freeman brochure specifies that there are
23 paperweights that typically measure 25
24 millimeters by 150 millimeters, does that sound
25 consistent with your recollection?

1 L. Stewart

2 A. That would be about an inch by four
3 inches, I believe, and no, my recollection is
4 they are smaller than that.

5 You may be referring to a weighted
6 clip. I'm referring to clips that they had that
7 were not weighted, they are probably not even
8 called a clip, they're just essentially little
9 small white-colored weights that would sit on the
10 document.

11 Q. And are you referring to something that
12 would be an accessory from Foster + Freeman that
13 goes with the VSC or something else?

14 A. We had it with our VSC when I had a VSC
15 4 at my disposal. I assume it came from Foster +
16 Freeman, but I don't have the order sheet, so I
17 don't know, and I do recall going back to them as
18 a result of this case and asking for a
19 specification sheet where it was described on
20 there. I just don't know the exact size.

21 Q. And when you are referring to when we
22 had a VSC 4, what are you referring to?

23 A. Early on in my career that was one of
24 the models that the Secret Service had access to.

25 Q. And did you ever use that VSC machine

1 L. Stewart

2 in the course of your work when you were with the
3 Secret Service?

4 A. Yes.

5 Q. And you're referring to small white
6 clips; is that how you referred to them?

7 A. You could argue that they are clips. I
8 don't know if that's what they at Foster +
9 Freeman refer to them as because they also, I
10 believe, held or had a device that physically
11 kind of put pressure down on the document, and
12 that may be also called a clip.

13 This was, as I said, something like a
14 whitish-colored rectangular-shape piece and there
15 were two of them.

16 Q. And to be clear, you have no evidence
17 that there were in fact weights of any kind in
18 the room during the defendants' examination of
19 the document in this case; correct?

20 A. That's correct.

21 Q. Now, as you testified earlier, you are
22 aware that it's the defendants' position that the
23 Work For Hire document is a recent forgery
24 created for the purposes of bringing this
25 fraudulent lawsuit; correct?

1 L. Stewart

2 A. Yes.

3 Q. And in his report Mr. LaPorte sets
4 forth the basis for his opinion that the document
5 was created recently; right?

6 A. Yes.

7 Q. He sets forth the basis for his opinion
8 that the ink in the interlineation on page 1 was
9 less than two years old when he tested the ink in
10 August of 2011; correct?

11 A. Correct.

12 Q. And he sets forth his basis for the
13 strength of his opinion, which was highly
14 probable or virtually certain; correct?

15 A. Correct.

16 Q. In his report Mr. LaPorte states that
17 he conducted GCMS testing on the inks; right?

18 A. That's correct.

19 Q. And he states from this GCMS testing he
20 determined that, among other things, the ink on
21 page 1 of the Work For Hire document contained PE
22 or phenoxyethanol; right?

23 A. Yes.

24 Q. And he states that the ink on page 1
25 had an unusually high PE level for a document

1 L. Stewart

2 that's purported to be eight years old; right?

3 A. Yes.

4 Q. And in his report Mr. LaPorte states
5 that he determined that the ink on page 1 of the
6 Work For Hire document contained a sufficiently
7 high level of PE to conduct an ink-dating method
8 which we refer to as PE testing; right?

9 A. Part of the ink on page 1, yes.

10 Q. And in fact the amount that Mr. LaPorte
11 found in his opinion was more than double the
12 usual threshold amount for conducting PE testing;
13 right?

14 A. Correct.

15 Q. Specifically, he said that the
16 abundance value was over 20,000, which was more
17 than double the usual threshold of 10,000 to
18 conduct PE testing; right?

19 A. That's what he said, yes.

20 Q. And in his report Mr. LaPorte states
21 that in order to conduct PE testing he measures
22 the percentage of PE lost when an ink sample is
23 heated; right?

24 A. Correct.

25 Q. Mr. LaPorte further provides an opinion

1 L. Stewart

2 that the loss of PE of 25 percent or more
3 indicates that the ink is less than two years
4 old; right?

5 A. Correct.

6 Q. In his report Mr. LaPorte further
7 states that after conducting PE testing on the
8 samples from the ink in the interlineation on
9 page 1 of the Work For Hire document he
10 determined there was an average loss of 64
11 percent of PE from that ink; right?

12 A. I believe that's what he said, yes.

13 Q. Now, to be clear, you are not offering
14 an expert opinion that GCMS testing itself is
15 unreliable; correct?

16 A. Can you specify GCMS testing on what?

17 Q. Well, what is GCMS testing?

18 A. It's gas chromatography mass
19 spectrometry, the technique itself has been
20 around for many, many years.

21 GC began in 1903 for the study of
22 chlorophyll. MS is a way of looking at ions and
23 detecting things, it's an add-on to a GC and has
24 been around for a long time as well, but not
25 nearly as long as GC.

1 L. Stewart

2 The technique as far as forensics goes
3 is used in many different applications and is
4 reliable. I'm questioning its use here in ink
5 age analysis.

6 Q. And I understand that and we'll get to
7 that.

8 I'm asking a more general question
9 which is, on its own GCMS testing itself, you are
10 not offering an opinion that it is unreliable;
11 correct?

12 A. Across the board, no.

13 Q. And you also do not offer an opinion
14 there's anything wrong with conducting GCMS
15 testing on ink; correct?

16 A. For research no problem, beyond that
17 there may be a problem.

18 Q. Okay.

19 Well, you don't offer any opinion about
20 any GCMS testing that you yourself conducted;
21 right?

22 A. I did not conduct GCMS tests in this
23 case.

24 Q. In fact you conducted no ink testing in
25 this case; correct?

1 L. Stewart

2 A. No. I did physical analysis on the ink
3 and decided at that point to hold off doing any
4 chemical analysis and I still have the ink
5 samples today, I have not tested them.

6 Q. And why did you hold off on doing the
7 chemical analysis?

8 A. Because once we -- once I determined
9 that the ink was degraded, I agree at that point
10 that you're very limited what you can do
11 chemically to analyze that ink and held off at
12 that point doing any additional tests so I would
13 not lose the sample that I had.

14 Q. Did you explain that in your report
15 that you have those ink samples and you decided
16 not to do any ink testing?

17 A. No.

18 Q. Any particular reason why you didn't
19 explain that in your report?

20 A. I'm not asked questions in the report,
21 I am only putting in the report what I found. If
22 I didn't do a test I didn't find anything.

23 Q. You explain in the report that you took
24 ink samples from the document, do you not?

25 A. Yes, I do. I still have them.

1 L. Stewart

2 Q. Right.

3 So you don't explain to the court what
4 you did with those ink samples, you just leave it
5 as an open question?

6 A. I believe at the end of the report I
7 indicated that I still had -- I would still
8 continue working on the case. I mean, I may
9 still examine the inks today, I don't know. At
10 this point I haven't examined those inks because
11 I don't see a need for it at this point.

12 Q. But you don't explain that to the
13 Court, in other words, you didn't explain that I
14 took ink samples, I still have ink samples, I did
15 not test them because of to my conclusion, you
16 didn't explain that in your report; correct?

17 A. No. To me, that's not a place to put
18 that.

19 Q. Now I want to get into your opinion
20 about PE, but I want to just also to make clear
21 what you are not offering an expert opinion on
22 relating to the general subject, so you are not
23 also offering any expert opinion specifically
24 refuting the propriety of Mr. LaPorte's threshold
25 of an abundance level of 10,000 in order to

1 L. Stewart

2 conduct the PE test; is that right?

3 A. It depends. I have to explain that
4 answer.

5 Q. Let me ask you more specifically.

6 In your report you are not offering any
7 expert opinion specifically refuting the
8 propriety of Mr. LaPorte's threshold of an
9 abundance level of 10,000 in order to conduct the
10 PE testing; correct?

11 A. In the report, no.

12 Q. Now, you do not offer an expert opinion
13 in your report that there was no PE contained in
14 the ink on the Work For Hire document at all;
15 right?

16 A. No.

17 Q. Because you didn't test the PE in the
18 ink; right?

19 A. Right.

20 Q. And so therefore you are not offering
21 an expert opinion that the PE levels in the
22 interlineation on page 1 were not high; right?

23 A. That's correct.

24 Q. And you do not offer an opinion in your
25 report specifically refuting the propriety of the

1 L. Stewart

2 25 percent threshold that Mr. LaPorte uses to
3 make the age determination; right?

4 A. It goes back to my earlier answer to
5 you which is in the report I don't have that
6 information, but you asked me if I refute that,
7 so it's two different questions.

8 Q. Well, you submitted an expert report to
9 the Court.

10 You understand this is an important
11 case to your client and to our clients; right?

12 A. Of course.

13 Q. And it was not important to include
14 your expert opinions in the expert report?

15 A. Of course it's -- but that wasn't an
16 opinion and --

17 Q. If you want the Court to consider your
18 opinion, it should be in your report; would you
19 agree with that?

20 A. No. There's many times reports are
21 concise and there may be days' worth of testimony
22 concerning a report or surrounding a report, so
23 in testimony in depositions and in trial much
24 more comes out than is oftentimes found in a
25 report.

1 L. Stewart

2 Q. So what other opinions do you have
3 about this case that you're holding back on us
4 that you are not putting in your report?

5 A. I'm not holding back anything.

6 You asked for something in addition to
7 my report, you asked me for an explanation and
8 when I tried to tell you the explanation you told
9 me to stick strictly to the report.

10 Q. I'm not asking for an explanation, I'm
11 asking for your opinion, I'm asking for whether
12 you have a particular opinion or not, and the
13 question is, in your report do you state -- you
14 offer an opinion specifically refuting the
15 propriety of the 25 percent threshold Mr. LaPorte
16 uses for making the age determination?

17 A. And again you asked in your report, so
18 you blocked me from answering the question.

19 If you're asking me the question to
20 refute it --

21 Q. Well, why don't you answer my question,
22 which is, in the report do you offer any -- an
23 opinion specifically refuting the propriety of 25
24 percent threshold that Mr. LaPorte uses to make
25 the age determination, yes or no?

1 L. Stewart

2 A. And I've answered that, in the report I
3 don't have anything concerning that question,
4 it's a new question.

5 Q. Well, you do state an opinion regarding
6 PE testing and you state it's not a reliable
7 test; right?

8 A. Not categorically I don't state that.
9 I'm talking about the methodology that Mr. LaPorte
10 used.

11 Q. And in your report you address some
12 factors that might affect the amount of PE found
13 in an ink on a document; right?

14 A. Yes.

15 Q. You mentioned storage or environmental
16 conditions; correct?

17 A. Correct.

18 Q. You mentioned other sources of
19 contaminations, which is skin cream or perfume;
20 right?

21 A. Among others, yes.

22 Q. And you mentioned that an improperly
23 conducted experiment might have an effect;
24 correct?

25 A. Correct.

1 L. Stewart

2 Q. So storage conditions, contaminants,
3 improperly conducted experiment.

4 Did I miss anything?

5 A. I believe that's what I included in the
6 report.

7 Q. So there are no other factors mentioned
8 in your report that might affect the amount of PE
9 found in the ink other than those three things;
10 correct?

11 A. Well, you didn't give an all-inclusive
12 list. I listed insect repellent --

13 Q. I understand. Other types of
14 contaminants. I understand you listed others and
15 it was not an exhaustive list, contaminants
16 generally; right?

17 A. That's correct.

18 Q. So contaminants generally, improperly
19 conducted experiment, storage and environmental
20 conditions, those are the only factors mentioned
21 in your report that might affect the amount of PE
22 found in the ink; right?

23 A. Well, the amount that's originally in
24 the ink would affect it. At that section of the
25 report that's what I'm talking about are those

1 L. Stewart

2 three things, but if you're asking me what can
3 affect it, each ink is an individual formulation
4 and the manufacturer may put PE in, it may not,
5 it may put varying amounts in.

6 Q. Can you explain what phenoxyethanol is?

7 A. It's a chemical.

8 Can I explain what it is beyond that?

9 Q. Yeah.

10 A. It's used, as I mentioned in the
11 report, for a number of different things; beyond
12 that I can't explain what it's for.

13 Q. Is it a volatile component?

14 A. Yes.

15 Q. What is a volatile component?

16 A. Something that would evaporate with
17 heat is typically what we call volatile.

18 Q. Why is it used in ink?

19 A. It's used in ink as a solvent and when
20 ink is first made it's made as a liquid, it stays
21 liquid until it's applied to paper and then it
22 initially hardens to where you are not going to
23 be able to rub it off and then slowly hardens
24 beyond that.

25 Q. What else is it used in?

1 L. Stewart

2 A. In the world?

3 Q. Yeah.

4 A. It's on my list there, everything that
5 I could research, it's insect repellent,
6 fragrances, hand lotion.

7 Q. And you said that because it's a
8 volatile component a known feature is that it
9 will evaporate with heat; right?

10 A. That's typically what I mean when I
11 talk about something being volatile, yes.

12 Q. Why is PE used in ink other than other
13 chemicals?

14 A. I don't know. I'm not an ink
15 manufacturer.

16 Q. You are providing this court with an
17 expert opinion about the ink.

18 A. Correct. I know that it's found in
19 some inks.

20 Q. You don't know why it's included in the
21 inks?

22 A. No. I am not a manufacturer.

23 Q. And you are aware that PE in ink --

24 MR. SOUTHWELL: Strike that.

25 Q. You are aware that a known feature of

1 L. Stewart

2 PE in ink is that it evaporates for roughly two
3 years and then the evaporation more or less
4 ceases; right?

5 A. No. There's differing opinions about
6 that. Some articles talk about it being one
7 year, others talk about it being a few months and
8 then some articles talk about it up to two years,
9 so it's a point of contention.

10 Q. Well, you are aware that a known
11 feature of PE --

12 MR. SOUTHWELL: Strike that.

13 Q. You would agree that a known feature of
14 PE in ink is that it evaporates for some period
15 of time and then the evaporation more or less
16 ceases; right?

17 A. I would believe that that's the case,
18 yes.

19 Q. When ink containing PE is fresh or
20 newer it will have a relatively high level of PE;
21 right?

22 A. It would have its highest level based
23 on that formulation.

24 Q. And you are aware that it is known to
25 evaporate quickly when first applied to paper;

1 L. Stewart

2 right?

3 A. Yes.

4 Q. And that over time it evaporates more
5 and more slowly; right?

6 A. That's correct.

7 Q. Until at some point it levels off;
8 right?

9 A. Levels off based on the capabilities of
10 the instrument doing the detection.

11 Q. Fine.

12 So the PE, it will not measurably
13 evaporate much more at that point; is that fair
14 to say?

15 A. That's fair.

16 Q. And so ink that is not fresh or new
17 would have less PE, but it still would have a
18 certain level; right?

19 A. If it had any at all in it. Some inks
20 don't have it.

21 Q. Fair enough.

22 If it had any at all, it would have its
23 highest levels when it was freshest on the paper
24 and at some point it would have less and remain
25 at that lower level; right?

1 L. Stewart

2 A. That's correct.

3 Q. Now let's discuss the factors you had
4 identified potentially affecting PE levels
5 putting aside how much was in the ink to start
6 with, all right?

7 It is your opinion storage conditions
8 are a critical factor in fading techniques;
9 right?

10 A. Yes.

11 Q. Your opinion relating to the effects of
12 storage conditions is contained in paragraphs 228
13 to 230, somewhere in that area of your report;
14 right?

15 A. Yes.

16 Q. And that's your report, Defendants'
17 Exhibit 13; correct?

18 A. I don't know that my report was entered
19 as a defendants' exhibit, I'm not sure.

20 Q. It was, it's Defendants' Exhibit 13 at
21 the outset of this deposition.

22 Now, is it your position that it is
23 important to know the storage conditions of a
24 document; right?

25 A. It's important if you were going to

1 L. Stewart

2 reach a conclusion about the age of the document.

3 Q. And that's because its possible storage
4 conditions could have affected the aging rate of
5 the ink; right?

6 A. That's a known fact, yes.

7 Q. Let's go to paragraph 235 of your
8 report, Defendants' Exhibit 13.

9 Your opinion that specifically relates
10 to PE and storage conditions is set forth there,
11 correct, and it specifically reads "Without a
12 full understanding of the storage conditions of
13 the Facebook contract as well as a determination
14 as to the cause of his purported unusually high
15 levels of PE in the damaged document, there can
16 be no weight given to his finding"; right?

17 A. That's part of my finding. It
18 continues there two paragraphs down where I talk
19 about there's no published standard for using the
20 LaPorte method.

21 Q. I'm specifically referring to the
22 storage conditions aspect of your opinion.

23 A. You're correct.

24 Q. Right?

25 So you do not state an opinion that the

1 L. Stewart

2 storage conditions of the Work For Hire document
3 actually had an effect on the levels of PE in the
4 ink on the first page; right?

5 A. No. It could have had an effect.

6 Q. It could have, but you are not opining
7 that it actually did have; correct?

8 A. There's no way of knowing, so, no, I am
9 not opining to that.

10 Q. What are the factual bases for your
11 opinion that storage conditions could have
12 affected the PE levels?

13 A. General understanding of chemistry
14 where if something is volatile, if it's heated
15 it's going to evaporate, if it's kept cold it's
16 going to evaporate slower, knowledge of that
17 actually being the case because of experiments
18 and research that I've conducted and published,
19 knowledge that other peers in the field have
20 published where they all warn against making ink
21 age analysis determinations without full
22 knowledge of the storage conditions and
23 appreciation of what they could have done as far
24 as affecting the aging of the document.

25 Q. And I understand that those are your

1 L. Stewart

2 bases for your opinion that the storage
3 conditions could have affected the aging rate, in
4 other words, you are speculating about what could
5 have affected the aging rate in the document
6 here; right?

7 A. Correct.

8 Q. And what I'm asking, I guess, to be
9 more specific, is what are your factual bases
10 that the storage conditions of the actual
11 document here could have caused the high levels
12 of PE in ink on the first page?

13 A. Simply the information that Ceglia has
14 brought forward as far as his declaration.

15 Q. That's the only piece of information
16 you have on which to support your speculation
17 that this could have happened; correct?

18 A. That's correct.

19 Q. And that was the, I think you said,
20 roughly two-minute conversation you had with him
21 followed by the declaration that he put in;
22 correct?

23 A. Followed by review of the weather
24 conditions in that area over a period of time, I
25 looked at that to decide whether or not

1 L. Stewart

2 Mr. Ceglia's response was accurate and I used
3 that as well.

4 Q. So two pieces of information, what Paul
5 Ceglia told you and the weather reports; right?

6 A. That's correct.

7 Q. And what Paul Ceglia told you is then
8 memorialized in the declaration that he filed;
9 right?

10 A. Yes.

11 Q. You are not relying on anything other
12 than what he told you in that declaration; right?

13 A. That's correct.

14 Q. As you testified, if environmental
15 conditions are hot, for example, you would expect
16 to see evaporation of PE accelerate.

17 Fair enough?

18 A. We need to define hot, but basically,
19 yes.

20 Q. So you would not expect to see high
21 levels of PE in ink on a document that was stored
22 in summerlike conditions in the northeast United
23 States in a nonclimate-controlled room; right?

24 A. We would have to address humidity in
25 the Northeast as a possible contributor that can

1 L. Stewart

2 affect how quickly something volatilizes or
3 evaporates.

4 Using your scenario in Palm Springs, I
5 would expect that it would evaporate quicker.

6 Q. And what role would humidity have?

7 A. It has a role that's been addressed by
8 peers in the field and previous research. It's
9 actual effect is unclear still and needs to be
10 researched further, but it has shown to have an
11 effect.

12 Q. And as you state in your report, cold
13 conditions could slow down the aging process;
14 right?

15 A. It could.

16 Q. So it might take longer than usual for
17 PE to evaporate from ink if they are stored in
18 what would be considered cold conditions?

19 A. That's correct.

20 Q. So, as an example, if a document was
21 stored in a meat refrigerator that was on and
22 cold you might expect the PE to evaporate in the
23 ink more slowly; right?

24 A. I would expect that, yes.

25 Q. How long would it be slower?

1 L. Stewart

2 MR. SOUTHWELL: Sorry. Let me strike
3 that.

4 Q. If something was kept in cold
5 conditions and it would cause the PE in the ink
6 to evaporate more slowly, how long -- how much
7 longer would it slow the evaporation?

8 A. There's no way of answering that
9 without doing experiments on the specific formula
10 of ink, and that has not been done. Not only was
11 the ink not identified here, we don't know what
12 was in it originally and there's not been any
13 research done on the potential effect of cold on
14 this ink.

15 Q. Now, you mentioned humidity and that
16 the results or the effects of that on evaporation
17 of PE are unknown.

18 What about the effects of humidity on
19 documents?

20 It's generally known that humidity and
21 moisture might cause mold in documents; right?

22 A. It could.

23 Q. You testified that you learned of what
24 Mr. Ceglia has claimed was how he stored the
25 document in roughly April of this year, that was

1 L. Stewart

2 roughly nine, 10 months after you actually
3 examined the documents in question; correct?

4 A. After I first examined them, yes.

5 Q. So prior to that you did not have any
6 information about how the Work For Hire document
7 was stored; correct?

8 A. No. I believe I was told by lawyers
9 that it was stored in a New York, northerly New
10 York home, but I don't have specifics.

11 Q. Did you ask those lawyers for more
12 specifics about the environmental conditions or
13 storage conditions?

14 A. At that point, no. We did not have an
15 ink age analysis report to look at.

16 Q. You mentioned you are relying on Paul
17 Ceglia's statements to you in his submission of a
18 declaration sworn under oath and I guess you are
19 referring also to weather reports as another
20 fact.

21 How do you know that Mr. Ceglia's
22 telling you the truth about this?

23 A. I don't, that's why I referred to the
24 weather reports as a backup.

25 Q. And what kind of backup does the

1 L. Stewart

2 weather report show? It shows that it's cold in
3 Buffalo?

4 A. Exactly.

5 Q. And you need a weather report to tell
6 you that?

7 A. I thought you guys might as a document
8 to support my --

9 Q. And how does that tell you that Paul
10 Ceglia's telling the truth?

11 A. It doesn't.

12 Q. So you don't have anything to tell you,
13 to support Paul Ceglia's testimony other than
14 what he's told you; right?

15 A. And the weather report.

16 Q. You just said the weather report
17 doesn't give you independent corroboration of
18 what he's telling you, it just simply says that
19 it's cold in Buffalo in winter, that's hardly
20 corroboration of his story.

21 His story is about how he stored the
22 document; right?

23 How does a weather report provide any
24 support for how he stored the document to give
25 you any confidence that he's telling the truth?

1 L. Stewart

2 A. I'll tell you why.

3 He told me where and how he stored the
4 document. I then compared that against the
5 independent weather report and realized that his
6 recollection of the temperatures in the area were
7 spot on and so I did use that as a way of looking
8 at what he said and seeing if I agreed with it or
9 not.

10 Q. So he told you the average temperatures
11 each year in the months that he was not living in
12 Buffalo and that was corroborated by the weather
13 reports because they were spot on?

14 A. No, he --

15 Q. What do you mean by spot on?

16 MR. BOLAND: Objection.

17 Let him answer the question, Alex.

18 A. He mentioned the number of months per
19 year that he lived in the facility, he mentioned
20 that the facility was not heated and the city and
21 location of the facility, that I then
22 corroborated with the weather report and then
23 later on I received his declaration that
24 elaborated even more on it.

25 Q. And does the weather report corroborate

1 L. Stewart

2 the fact that he claims to have kept the document
3 in a hope chest?

4 A. No.

5 Q. The only thing the weather report
6 corroborates is that it's cold in Buffalo in the
7 winter; right?

8 A. It had the winter weather as well as
9 the summer and the spring and the fall weather,
10 so the entire time it was stored there we had the
11 weather reports.

12 Q. Okay.

13 Does the weather report provide any
14 corroboration for his claim he kept the document
15 in a hope chest?

16 A. No. I already told you that.

17 Q. Does the weather report provide any
18 corroboration that he kept the document in a hope
19 chest in a room that was not insulated?

20 A. No.

21 Q. Does the weather report provide any
22 corroboration to the fact that he asserts that he
23 kept the document in a house that does not have
24 central heating?

25 A. No. I assume that's easy to check

1 L. Stewart

2 into, but I don't have --

3 Q. Did you check into it?

4 A. No. I assume that would be something
5 that the lawyers would do. I don't have that.

6 Q. You're representing him as his expert;
7 right? You could have asked him that?

8 MR. BOLAND: Objection.

9 A. Not as a plumber-heater expert. I'm
10 presenting the forensic findings to you.

11 Q. You just testified that the storage and
12 environmental conditions are a critical factor in
13 providing an opinion, this is critical piece of
14 information about that and you didn't ask him.

15 A. For independent verification that his
16 house was heated?

17 Q. To corroborate that he's telling the
18 truth.

19 A. No, I did not ask him for that.

20 Q. Have you personally seen the room in
21 which he says the Work For Hire document was
22 stored?

23 A. No, I have not.

24 Q. Do you know whether there's carpet in
25 the room?

1 L. Stewart

2 A. No.

3 Q. Is there insulation?

4 A. I don't know.

5 Q. Can you tell me anything about the
6 room?

7 A. No.

8 Q. You don't have any firsthand knowledge
9 about that; correct?

10 A. No.

11 Q. So you don't know if there is an air
12 conditioning unit in the room; right?

13 A. I do not know that.

14 Q. How about the hope chest that he claims
15 the document was stored in, have you seen that?

16 A. No.

17 Q. Do you know whether it exists or not?

18 A. No. I assume that it's easy to find
19 out, but I don't have that information.

20 Q. You don't know one way or the other;
21 right?

22 A. No.

23 Q. You don't know what it's made out of;
24 right?

25 A. No.

1 L. Stewart

2 Q. And Mr. Ceglia in his declaration said
3 that the Work For Hire document was stored with a
4 series of other documents dating from the same
5 time.

6 Have you examined those documents?

7 A. No, I have not.

8 Q. Did you ask for them?

9 A. No.

10 Q. Didn't you think that would be
11 important to examine in rendering an opinion for
12 the Court?

13 A. No. It's different documents and, if
14 anything, they contaminated this document, they
15 are not going to add to the result here.

16 The ink on this document is
17 contaminated to the point it can't be tested.

18 Q. And that could have been caused by
19 other documents in this hope chest; is that what
20 you're saying?

21 A. No.

22 There could be a transference from
23 documents, there could be all kind of effect from
24 other documents.

25 I don't know. All I know is that it

1 L. Stewart

2 makes the document completely unreliable, as far
3 as ink age analysis goes.

4 Q. Do you have any basis, any factual
5 basis to support your speculation that there
6 could have been ink transference? Is that in
7 your report?

8 A. No, it's not in my report, that's not
9 something I --

10 Q. Do you have any factual basis to assert
11 that?

12 A. Yes. Firsthand knowledge. If a
13 document is moistened, and you mentioned humidity
14 as a factor here, if it's moistened and you've
15 got a water-based ink, of course you could get
16 transfer.

17 Q. So what firsthand knowledge do you have
18 of the Work For Hire document being stored in a
19 hope chest with other documents?

20 A. I don't of that. My firsthand
21 knowledge is experimentation with inks and papers
22 and seeing that there can be a transfer.

23 Q. So you have no firsthand knowledge
24 about transference with respect to the document
25 in this case, the purported Work For Hire

1 L. Stewart

2 document; correct?

3 A. That's correct.

4 Q. You are just speculating about this;
5 right?

6 A. No. I'm answering your question.

7 You brought up humidity, you brought up
8 what I know and what I don't know, and so my
9 response to you is based on my own research and
10 that's as far as it goes. I don't know about
11 this case.

12 Q. I understand.

13 You've got research that says that
14 there can be transference in general. What I'm
15 asking is, you have no specific factual
16 information that there was transference of any
17 ink here, that's simply speculation; right?

18 A. I'm not speculating that there was
19 transfer, I'm saying I don't know one way or
20 another.

21 Q. Right.

22 Meaning that you have no opinion that
23 there was; right?

24 A. Correct.

25 Q. Now, as you said, the weather report

1 L. Stewart

2 establishes that, well, there's winter, spring,
3 summer and fall in Buffalo; is that fair to say?

4 A. It did establish that, yes.

5 Q. Okay.

6 And you understand from, I would say,
7 common sense understanding of what weather is
8 like in the Northeast and I guess supposedly the
9 weather reports that it's warmer and milder in
10 the spring, even warmer in the summer and then
11 colder in the winter; right?

12 A. Correct.

13 Q. And in Wellsville, New York, where we
14 are talking about, it gets quite cold in the
15 winter, right, freezing temperatures; correct?

16 A. That's my recollection, yes.

17 Q. But it's not Antarctica, right, the
18 temperature is not constantly freezing; is that
19 right?

20 A. That's correct.

21 Q. And in fact in the summer it can get
22 hot, you can have highs in the upper seventies or
23 eighties, even sometimes the nineties; right?

24 A. I believe so.

25 Q. So you would acknowledge that Mr.

1 L. Stewart

2 Ceglia's house was not constantly in subzero
3 temperatures; right?

4 A. That's correct.

5 Q. It was subject to all the seasons of
6 the year; right?

7 A. That's correct.

8 Q. So every year since 2003, since the
9 Work For Hire document was supposedly signed in
10 April of 2003, it was supposedly subjected to the
11 summers of 2003, 2004, 2005, 2006, 2007, 2008,
12 2009 and part of 2010; right?

13 A. As well as the winters, yes.

14 Q. So roughly seven summers, seven
15 winters; yes?

16 A. Again, I don't know if the document was
17 stored there its entire life, but it's been -- it
18 would have been seven years wherever it was
19 stored.

20 Q. So you would acknowledge that in this
21 area of the country where the document was stored
22 you have substantial periods of time over those
23 seven years where it's hot, which might
24 accelerate the aging of ink, and where it's cold
25 which might decelerate the aging of ink; right?

1 L. Stewart

2 A. I would not refer to 70- to 80-degree
3 temperatures as being hot as accelerating the
4 ink, that would be pretty much normal
5 temperatures that we would consider when we do
6 research. Anything above that would be hot.

7 Q. So if there's normal temperatures you
8 are testifying it would not accelerate, it would
9 just have the normal evaporation?

10 A. Right. The age research that's been
11 done on ink typically assumes normal aging as far
12 as temperature and humidity.

13 Q. Now, as you said before, your factual
14 basis with respect to what Mr. Ceglia told you
15 about how the document was stored and the weather
16 report is your support for providing this
17 possibility that storage conditions could have
18 had some affect; right?

19 A. No. Storage conditions having an
20 affect on the aging of a document has been widely
21 reported by peers in the field for decades.

22 Q. I understand that. Listen to my
23 question, if you would.

24 My question is about the Work For Hire
25 document here and what you are testifying to and

1 L. Stewart

2 what your report says is that based on
3 Mr. Ceglia's say-so and the weather reports there
4 is a possibility that those storage conditions
5 could have had some effect on this document;
6 right?

7 A. That's correct.

8 Q. Now, you're familiar with a forensic
9 document expert named Albert S. Osborn; right?

10 A. Yes.

11 Q. And indeed, in your report, Defendants'
12 Exhibit 13, paragraph 32, you cite to a book by
13 Albert Osborn; right?

14 A. Yes.

15 Q. And Mr. Osborn is described by some as
16 the grandfather of forensic document examination;
17 right?

18 A. Yes, I've heard that.

19 Q. He is one of the esteemed practitioners
20 that document examiners study in the course of
21 their training; right?

22 A. Yes.

23 Q. And he wrote a number of leading books
24 in the field; right?

25 A. Yes.

1 L. Stewart

2 Q. What are their titles?

3 A. You're holding "Questioned Documents."
4 I don't know all of the titles.

5 Q. You cite "The Problem of Proof" in your
6 report, right, that's another one?

7 A. Okay.

8 I've got hundreds of books in my
9 collection, I believe those two are two of his.

10 Q. And those documents, "Questioned
11 Documents" by Albert S. Osborn and "The Problem
12 of Proof," those are reliable authorities;
13 correct?

14 A. I would consider then that, yes.

15 Q. You have read those books; yes?

16 A. Yes.

17 Q. Are all of those books in your library?
18 You said you've got hundreds of books.

19 Are those included in your library?

20 A. The two that I referred to are, yes.

21 Q. And the two being "Questioned
22 Documents" and "The Problem of Proof"; right?

23 A. I don't believe I refer to "The Problem
24 of Proof," do I?

25 Q. I think you do at -- no, I guess you

1 L. Stewart

2 may not.

3 And which edition of "Questioned
4 Documents" do you have in your library?

5 A. The 1910 edition.

6 Q. Do you have the second edition from
7 1929?

8 A. I believe I do, yes.

9 Q. Okay.

10 You don't cite "The Problem With
11 Proof," but you're familiar with the book; right?

12 A. Yes. I believe that was one of his
13 books, yes.

14 Q. You testified a moment ago that you
15 read it?

16 A. Yes. I just don't recall the exact
17 title, but I think that's one.

18 MR. SOUTHWELL: If I could have this
19 marked as our next exhibit, please,
20 Defendants' Exhibit 24.

21 (Defendants' Exhibit 24, excerpts from
22 Albert S. Osborn's book "The Problem of
23 Proof," marked for identification, as of
24 this date.)

25 Q. I'm showing you now Defendants' Exhibit

1 L. Stewart

2 24, which are some excerpts from Albert S.

3 Osborn's 1922 book "The Problem of Proof."

4 Look at that, please.

5 A. Thank you.

6 Q. I'm going to direct your attention to
7 page 32.

8 A. I believe you said 1924. It says 1922
9 on the front page.

10 Q. Thank you. Yes, that's right.

11 A. 32, did you say?

12 Q. Yes.

13 A. Okay.

14 Q. And there Mr. Osborn is talking about
15 questioned document stories and studies of
16 inherent improbability and provides an example
17 relating to foundling wills.

18 Have you heard of the term, these types
19 of documents, foundling wills?

20 A. I am trying to find that in the
21 document.

22 I believe he is referring to wills that
23 come in after the fact, after the death.

24 Q. Are you familiar with the concept of
25 foundling wills?

1 L. Stewart

2 A. I recall reading about it in very early
3 books, but I'm not familiar with the concept, no,
4 other than his explanation of what he means by it.

5 Q. Let's look here in the middle paragraph
6 on page 32, starting with the second sentence,
7 Osborn defines foundling wills as a particular
8 type of questioned document and he says, quote,
9 "One class of stories of this kind are those
10 relating to foundling wills which make a tardy
11 appearance and in effect, at least, are left on
12 the doorstep of the administrator or an executor
13 of an estate. When these peculiar papers, many
14 of which are spurious, are brought into court
15 they must, of course, be accounted for in some
16 way. The stories designed to explain the long
17 delay, the unusual appearance and the startling
18 contents of these documents furnish most
19 interesting studies."

20 Is that what this says here?

21 A. Yes, it is.

22 Q. And then it goes on: "When analyzed,
23 these stories often are inherently improbable.
24 This improbability is accentuated when they are
25 compared with the stories relating to similar

1 L. Stewart

2 papers in other cases. One of the common
3 similarities in the alleged life histories of
4 these misplaced documents is the utter
5 indifference with which a very valuable paper was
6 handled and kept by those in whose hands it was
7 left and in whose interest it was drawn. It
8 apparently was tossed about from pillar to post
9 with the utmost unconcern. It was thrown into
10 some old box or basket or shoved into some old
11 book or almanac or handed over to a witness who
12 is almost a stranger and then entirely forgotten.
13 After the death of the testator, and sometimes
14 long after, it all at once turns up 'accidentally
15 and providentially.' The accounts of the hiding
16 places of some of these forgotten wills develop
17 some occasional and striking originality, but in
18 numerous ways the stories are strangely alike."

19 Do you see that?

20 A. Yes.

21 Q. Now, seeing this description, doesn't
22 the Work For Hire document and the circumstances
23 of its supposed discovery sound an awful lot like
24 a foundling will?

25 A. Not to me. I don't know the

1 L. Stewart

2 circumstances of the discovery completely. I
3 know that it is at issue between two sides who
4 both have a different opinion about its origin.

5 Q. Wouldn't you agree that it has
6 startling contents, a two-page contract
7 purporting to entitle someone to half of a
8 multibillion-dollar company, isn't that startling
9 contents to you?

10 A. It is.

11 Q. And wouldn't you agree that it has made
12 a tardy appearance, appearing seven years after
13 which it was purportedly signed?

14 A. That's the document that we're seeing,
15 I believe, is seven years afterwards. I don't
16 know that there's any earlier e-mails or things
17 that discuss the document and its provenance.

18 Q. Are you aware of any?

19 A. No, but I'm not aware that there aren't
20 any.

21 Q. And that tardy appearance must, of
22 course, be counted in some way, as Osborn says,
23 and the way that it was accounted here was that
24 it was thrown into some old box or basket like a
25 hope chest.

1 L. Stewart

2 Doesn't that sound like what the
3 situation we have for the Work For Hire document?

4 A. No. That's what sounds like one side
5 of a party is saying that has then become an
6 issue that forensic scientists have to look at
7 and address and that's what's happening.

8 Q. And that's precisely what Osborn says,
9 that these stories often alone are sufficient to
10 arouse a strong suspicion that the document is
11 not genuine and it requires examination and
12 analysis; right?

13 A. Of course. You always get a one-sided
14 view from one party in a case, you don't trust
15 that.

16 Q. And Osborn's conclusion as to these
17 types of stories is that they alone are
18 sufficient to arouse a strong suspicion that the
19 document is not genuine; right?

20 Would you agree with Osborn's
21 conclusion about these foundling will stories?

22 A. I've never examined any of his wills
23 from 1922 that led to him writing this book. I
24 have examined numerous wills in recent years and
25 oftentimes they're false.

1 L. Stewart

2 Q. And would you agree with the assertion,
3 which is what Osborn also concludes, that when
4 you're presented with a document that is
5 questioned and it comes with a story of tardy
6 appearance and startling contents, that that
7 would arouse a strong suspicion that the
8 document's not genuine, that it would require
9 additional testing; would you agree with that?

10 A. I would say that any document like that
11 that becomes an issue of a court case requires
12 independent forensic testing and that you
13 shouldn't trust what either side tells you as
14 being accurate.

15 Q. And you want to seek out solid facts
16 that would address what could be a suspicion the
17 document's not genuine based on the story about
18 how it was discovered; is that fair to say?

19 A. Correct.

20 Q. Yes?

21 A. Yes.

22 Q. And here you relied, in addition to
23 your examination, which, of course, doesn't go to
24 the question of the storage of the document, you
25 relied on Mr. Ceglia's statement and declaration

1 L. Stewart

2 regarding the storage of the document; right?

3 A. Well, my examination does go towards
4 the storage of the document and that I reported
5 that your expert who's opining about the age of
6 the document did not consider that in his
7 opinion, so I do refer to that.

8 As far as Mr. Ceglia making a comment
9 about its storage conditions, we got the weather
10 report and the rest I assume is records that we
11 could obtain regarding whether heaters were put
12 in his house, whether he paid services to have
13 the house prepared for winter. I'm sure there's
14 ways of checking to see if his story is accurate;
15 but that is not part of what I've done.

16 Q. And you've provided no evidence of
17 that; right?

18 A. I've provided just his --

19 Q. His statements, yes, and --

20 A. And the weather --

21 Q. -- and the weather report that --

22 MR. BOLAND: Objection.

23 A. -- and then my reliance on other
24 research and research I've done to show that it
25 is an important factor.

1 L. Stewart

2 Q. Right.

3 And as you've just agreed, the weather
4 report provides no corroboration as to actually
5 how the document was stored in a hope chest in an
6 uninsulated room; correct?

7 A. That's correct.

8 Q. So you weren't suspicious or skeptical
9 of Mr. Ceglia's story, you're perfectly
10 comfortable relying on that?

11 A. I am suspicious about what both sides
12 are saying.

13 Q. You also testified about your assertion
14 that other experts in this case did not rely on
15 information about the storage conditions.

16 What is your factual basis for
17 asserting that the defendants' experts did not
18 rely on the available information from plaintiff
19 about the storage conditions?

20 A. Factually I have Mr. LaPorte's own
21 research that he's published where he talks about
22 the importance of relying on that --

23 Q. You are not listening to my question.

24 Can you answer my question rather than
25 the question you want to answer?

1 L. Stewart

2 MR. BOLAND: Objection.

3 Q. My question is, what factual basis do
4 you have to assert that the defendants' expert
5 did not rely on information about the storage of
6 this particular document, the Work For Hire
7 document?

8 A. And I'm trying to answer that for you.

9 Q. Okay.

10 So try answering that question, please.

11 A. Okay.

12 If Mr. LaPorte published reality, which
13 is that the storage conditions do affect the
14 aging of the document, then he did not follow
15 that in this case because he would not have
16 tested the document.

17 Q. That does not answer my question.

18 My question is, you have asserted that
19 there is no -- that defendants' experts have
20 not -- have ignored the evidence of the storage
21 conditions of this particular document. I'm not
22 talking about published reports, I'm talking
23 about this particular document.

24 What is your factual basis for that
25 assertion?

1 L. Stewart

2 A. It's an assumption and it's assumption
3 based on had he followed his own research, he
4 would never have done the test.

5 Q. So you have no factual basis, you are
6 simple making an assumption and speculating;
7 correct?

8 A. I'm assuming it based on his original
9 research being accurate; if that's accurate then
10 there should not have been a test here.

11 Q. So you have no factual basis, you are
12 assuming it; correct?

13 A. I'm assuming it, correct.

14 Q. Now let's talk about the other factor
15 you note as potentially having an affect on PE
16 levels, the contamination; right?

17 So in paragraph 223 you state that
18 LaPorte indicates the amounts of PE he found in
19 the Facebook contract was in abundance and more
20 than double the usual threshold for conducting PE
21 testing. This clearly shows that surprisingly
22 high levels of PE most probably came from some
23 other contamination source or else from an
24 improperly conducted experiment or conclusion
25 reached by LaPorte.

1 L. Stewart

2 Did I read that correctly?

3 A. That's what it said.

4 Q. And we'll talk about the suggestion of
5 improperly conducted experiment in a moment, but
6 it's your position that a high level of PE in the
7 ink in the Work For Hire document most probably
8 came from some other contamination source; right?

9 A. No. It's my finding that it should
10 have been considered.

11 Q. Could I direct your attention to
12 paragraph 223 of your report, the second
13 sentence, which reads "This clearly shows that
14 the surprisingly high levels of PE most probably
15 came from some other contamination source or else
16 were from an improperly conducted experiment or
17 conclusion reached by LaPorte."

18 Do you see that?

19 A. Yes.

20 Q. Do you want to change the answer you
21 just testified to?

22 A. No. You're not reading the five
23 paragraphs before that that all pertain to the
24 same thing. I am leading up to an opinion based
25 on numerous things and you're breaking it apart

1 L. Stewart

2 in individual components.

3 Q. So you're saying that the high levels
4 of PE came from a cumulative effect of a variety
5 of things? Is that what you're saying?

6 A. No, that's not what I just said.

7 You can go back to early on in that
8 section and you can see a number of different
9 factors that I'm pointing out that may effect the
10 level of PE. It's not something new I'm coming
11 up with, it's something that's been reported
12 widely in the research.

13 Q. Let's look then at your sentence in
14 paragraph 223.

15 Can you read the second sentence in
16 paragraph 223?

17 A. "This clearly shows that the
18 surprisingly high levels of PE most probably came
19 from some other contamination source or else from
20 an improperly conducted experiment or a
21 conclusion reached by LaPorte."

22 That's three separate components that
23 refer to the 10, 12 paragraphs before.

24 Q. And you mention in 221 the idea that
25 there could be various contaminants and you list

1 L. Stewart

2 sunscreens -- skin creams, sunscreens, fragrances
3 and cosmetics as well as insect repellents; right?

4 A. That's correct.

5 Q. Those are other contaminants that you
6 assert have PE as a component; right?

7 A. Not I.

8 Those are assertions by Mr. LaPorte and
9 then other cited sources that I have.

10 Q. Okay. But I'm talking about your
11 report.

12 This is not an assertion of your report
13 where you say it is known to be widely used in
14 skin creams, you're referring to -- you are
15 disclaiming that this is your opinion that you're
16 providing in 221?

17 A. No. That was researched and reported
18 by LaPorte earlier on, so I trust that that's
19 true.

20 Q. Okay.

21 But this is your opinion, I'm talking
22 about your report.

23 So you're saying you don't adopt that,
24 you are just saying that's LaPorte?

25 A. No, I'm not saying that at all.

1 L. Stewart

2 Q. I am asking if this is your opinion.

3 Is this not your opinion?

4 221, paragraph 221, look at that,

5 please.

6 A. Okay.

7 Are you ready?

8 Q. Go ahead.

9 A. I am trying to say that if you read
10 that it says that it is found, it is known to be
11 widely used in all of those different things. I
12 believe four of those came from Mr. LaPorte's
13 research and the fifth one came from a chemistry
14 guidebook called "The Merck Index."

15 Q. Are you providing this opinion to the
16 Court?

17 A. Yes.

18 Q. And how would those products have made
19 their way onto the document such as the Work For
20 Hire document such that they might have this
21 possible effect that you comment upon?

22 A. A number of people did not use gloves
23 when they examined the document in Buffalo, if
24 they went to the restroom and they put some kind
25 of a lotion on their hands it could affect it; if

1 L. Stewart

2 the document was stored in a facility that was
3 sprayed for bugs it could affect it.

4 I don't know. I'm putting it out there
5 because I'm putting out possibilities that should
6 have been considered and they weren't.

7 Q. And you say a number of people handled
8 the document without gloves.

9 Who?

10 A. I don't know. We'd have to review the
11 entire tape. I don't want to point fingers
12 without reviewing it, but I do recall that there
13 people that did not have gloves on when they
14 touched the document.

15 Q. How many people?

16 A. I don't have a number.

17 Q. But you are just speculating that a
18 number of people did?

19 A. I'm trying to answer your question. We
20 can stop and review the tape, if you like.

21 Q. You are prepared to testify here and
22 tell the Court many people, but you don't
23 actually know because you haven't reviewed the
24 tape recently and you don't have that number at
25 the ready; is that right?

1 L. Stewart

2 A. My recollection is that there were a
3 number of people who touched it without gloves on.

4 Q. And if they touched the edges of the
5 document would that have --

6 MR. SOUTHWELL: Well, strike that.

7 Q. How would touching a document using --
8 let's use an example -- an arm that had sunscreen
9 on it, how would that put the contaminant onto
10 the document? Would it have to be a palm or a
11 forearm, something like that?

12 A. I don't know that it would. It would
13 have to be researched.

14 If we know that PE is in that material
15 and somebody had it on their hands and they
16 touched the document without gloves, then there's
17 certainly the possibility of transfer.

18 To get it on the ink there would have
19 to be a specific touch to the area that had the
20 ink on it or it would have to be rubbed over to
21 that area by someone else at a later time.

22 Q. And just to be clear, you are
23 speculating that these might be options that
24 should be considered; right?

25 A. Correct.

1 L. Stewart

2 Q. You didn't find any of these items,
3 these contaminants on the Work For Hire document;
4 correct?

5 A. No. We don't know if there's any
6 contaminants on the document.

7 Q. Well, did you look?

8 A. I wouldn't know what to look for. I
9 don't have chemical compositions of these
10 materials. The mere presence of PE could have
11 come from a number of sources.

12 Q. Did you conduct any test to determine
13 whether there were contaminants on the page?

14 A. No. It would be a permanent position
15 for the rest of my life to try to figure that
16 out.

17 Q. But the answer is you did not conduct
18 any tests to determine whether there were any
19 contaminants on the page; correct?

20 A. Correct.

21 Q. Did you see anyone buy lotion or
22 sunscreen on their hands and then handle the
23 document?

24 A. No. I saw people leave the room for
25 restroom breaks and I don't know what they did.

1 L. Stewart

2 Q. Did you see anyone spray insect
3 repellent on the document?

4 A. No. That referral was maybe under the
5 control of the Ceglias when it was in the hope
6 chest.

7 Q. He might have sprayed insect repellent
8 on it?

9 A. He might have. I don't know.

10 Q. Do you know who did test the document
11 for contaminants?

12 A. I don't know if anyone tested it.

13 Q. Mr. LaPorte tested the document for
14 contaminants.

15 Did you know that?

16 A. I would love to have the chance to
17 depose him on that.

18 Q. Oh, okay.

19 You want to depose Mr. LaPorte now?

20 MR. BOLAND: Objection.

21 A. No. I assume when his chance for
22 deposition comes I will be, as he is here with
23 you, I'll be providing questions and I'd love
24 that opportunity.

25 Q. Do you want to ask the questions in the

1 L. Stewart

2 deposition?

3 MR. BOLAND: Objection.

4 A. That would not be my role. I would
5 just, as your experts are doing, provide
6 information to the lawyers.

7 Q. You're sure you wouldn't like to ask
8 the questions?

9 MR. BOLAND: Objection.

10 A. I think I answered that.

11 Q. Okay.

12 So you're not aware that it's
13 Mr. LaPorte's standard protocol to run paper
14 blanks prior to GCMS testing and PE testing?

15 A. Of course that's his protocol, but that
16 would not test for contamination of the area of
17 the ink.

18 Q. Did you know that he ran paper blanks
19 and found no phenoxyethanol in the paper blanks?

20 A. A paper blank that had no ink on it
21 having no phenoxyethanol means nothing to me.

22 Q. It means nothing to you?

23 A. Right, because it's not the -- what he
24 tested to get phenoxyethanol was ink plus paper.

25 Q. I see.

1 L. Stewart

2 So there had to be a tiny dab of
3 sunscreen on exactly that little piece of ink and
4 that could have possibly caused the contamination;
5 is that it?

6 A. I don't know the amount. I'm just
7 saying the literature says it is something that
8 should be considered and there's a number of
9 things that could have caused contamination, I
10 just put it in the report.

11 Q. So it's possible that somebody could
12 have had sunscreen on their arm and they could
13 have brushed against the paper and that would
14 have contaminated only the ink and not the paper;
15 is that right? Is that what you're saying?

16 A. You are talking about a microscopic
17 plug of paper sample taken from the paper versus
18 the entirety of an 8-1/2-by-11 sheet, so simply
19 testing a paper blank in relation to this does
20 not mean the document was not contaminated.

21 Q. You testified that you have provided
22 expert analysis in, I think you said, thousands
23 of cases; right?

24 A. Yes.

25 Q. And are those all cases involving ink?

1 L. Stewart

2 A. No.

3 Q. Quite a few of them involved ink;
4 correct?

5 A. Yes.

6 Q. And have you ever offered an opinion
7 about ink and about your findings with respect to
8 ink on questioned documents in those reports?

9 A. Yes.

10 Q. And in those occasions when you did
11 provide an opinion about ink, did you rule out
12 all possible explanations for the findings that
13 you had?

14 A. I never testified to GC mass spec, that
15 is a completely different avenue for doing ink
16 analysis than from what I have used in actual
17 casework.

18 Q. So you've never testified, you have
19 never put in an expert report related to GCMS
20 testing and the results therefrom?

21 A. I have with GC, not GCMS, and based on
22 the research that's been conducted and reported I
23 would not do that, I would not allow it to be
24 done in casework.

25 Q. And how would you propose to rule out

1 L. Stewart

2 every theoretical possibility for chemical
3 results? Would one have to interview every
4 single person who touched a document?

5 A. Thus the problem with the technique.

6 Q. So you're saying it's worth absolutely
7 no weight because you cannot rule out every
8 possible way that you might have certain chemical
9 findings? Is that what you're saying?

10 A. I don't know if it is feasible in the
11 future that that could be done. Today it has not
12 been done.

13 Q. There is absolutely no way because you
14 cannot rule out every possible alternative
15 explanation; right?

16 A. To the Federal Government and to my
17 opinion, correct, the federal government is not
18 using the approach and neither am I.

19 Q. So it's your opinion that you should
20 not use such an approach because you cannot rule
21 out all possible alternative explanations; right?

22 A. Of course, especially if you are going
23 to issue a finding that something's fraudulent.

24 Q. Now, you said that you don't do any
25 analysis using a GCMS machine; right?

1 L. Stewart

2 A. No.

3 Q. Let me restate that.

4 You have not issued findings in reports
5 using GCMS testing; right?

6 A. On ink, correct. I have on other
7 materials.

8 Q. Do you own a GCMS machine?

9 A. No, I do not.

10 Q. Do you know how to use one?

11 A. Yes.

12 Q. When was the last time you used one?

13 A. The last time in casework was back at
14 the Bureau of Alcohol, Tobacco and Firearms
15 between '79 and '82.

16 Q. Was that the last time you used a GCMS
17 machine for casework?

18 A. With MS, correct, I believe that's the
19 last time.

20 Q. Was that for ink analysis?

21 A. No. It was for explosives.

22 Q. When was the last time you issued an
23 expert report based on results of your own work
24 on a GCMS machine?

25 A. It would have been during that time

1 L. Stewart

2 period.

3 Q. And that was before you were with the
4 Secret Service?

5 A. That's correct.

6 Q. Have you ever testified about a GCMS
7 result when you personally conducted the testing?

8 A. I don't recall if any of those old
9 cases ever went to trial, I'm not sure.

10 Q. And you were with the Bureau of
11 Alcohol, Tobacco and Firearms up until 1982; is
12 that right?

13 A. July of 1982, yes.

14 Q. Okay.

15 So that was back before 1982 that you
16 had done the GCMS testing; correct?

17 A. Correct.

18 Q. And not since then; right?

19 A. No, I have not done that particular
20 approach since then.

21 MR. SOUTHWELL: Why don't we take a
22 quick break here.

23 MR. BOLAND: Before you do that, just a
24 note that it's approximately 4:10 p.m. and
25 so we started at 10 o'clock this morning, I

1 L. Stewart

2 think we'd all agree, we took one break for
3 20 minutes, so at 5:20 will be seven hours,
4 just letting you know.

5 MR. SOUTHWELL: We dispute that that is
6 the correct count of the amount of time.

7 MR. BOLAND: Well, I got it from the
8 videographer, so he is the guy calculating
9 the time.

10 MS. AYCOCK: We have seven hours of
11 deposition.

12 MR. BOLAND: We were back here after
13 the 20-minute break, the court reporter, the
14 witness, myself, the videographer.

15 MR. SOUTHWELL: I've heard you, I've
16 heard you. We have a different --

17 MR. BOLAND: You are on your time.

18 MR. SOUTHWELL: We have a different
19 perspective on how much time it is, I think
20 it's the correct perspective based on the
21 case law, so if you want to go to the Court
22 on it, I'm more than happy to do that.

23 I have a case in the other room that
24 makes it quite clear that it is deposition
25 time, so you can make all the records you

1 L. Stewart

2 want to make about this and if you want to
3 go see the judge, let's go do it, but we're
4 going to finish our deposition and we're
5 going to take our seven hours, if we need
6 it; I'm not sure we do.

7 MR. BOLAND: I'm just letting you know
8 5:30 is seven hours, anything after that is
9 a bonus, that's all I wanted to put on the
10 record.

11 THE VIDEOGRAPHER: Going off the
12 record. The time is 4:10. End of tape 4.

13 (Recess taken.)

14 THE VIDEOGRAPHER: We are back on the
15 record. The time is 4:25. This is tape
16 number 5.

17 BY MR. SOUTHWELL:

18 Q. Now, Mr. Stewart, in your report at
19 page 74 you describe what you believe Gerry
20 LaPorte did as the LaPorte method of PE testing;
21 correct?

22 A. Yes.

23 Q. And your description is based on his
24 report and your experience with Mr. LaPorte;
25 right?

1 L. Stewart

2 A. In part.

3 Q. Well, you weren't present when he ran
4 his testing, were you?

5 A. Well, when he ran his GCMS testing, no.

6 Q. Right.

7 You were not present when he ran any of
8 his chemical analysis; correct?

9 A. That's correct.

10 Q. Can you explain how the procedure used
11 by the Canada Border Services Agency and the
12 procedure used by Mr. LaPorte differs?

13 A. I can, if I refer to documents I have
14 back in my office. I do not have those documents
15 here.

16 Q. What documents are those?

17 A. Published research by the Canadians
18 versus published research by Mr. LaPorte and then
19 the notes of his examination in this case.

20 Q. Your report is offered, it's fair to
21 say, as a rebuttal to Mr. LaPorte's report; right?

22 A. No. It was my own independent analysis
23 plus a rebuttal.

24 Q. Well, right, there may have been your
25 own independent analysis, but in part you were

1 L. Stewart

2 offering a counter opinion or a rebuttal to what
3 Mr. LaPorte's report said; yes?

4 A. That's what it ended up being. It
5 equally possibly could have been that I agreed
6 with Mr. LaPorte, I just didn't in this case.

7 Q. Well, that -- it seems you two have a
8 long history, so that seems unlikely, wouldn't
9 you say?

10 A. Just in the past couple of years since
11 he's been in private practice, yes.

12 Q. I see.

13 And you knew you were supposed to be
14 deposed here for a month or so; right?

15 A. Correct.

16 Q. And you knew one of the big issues that
17 certainly is in your report is your critique of
18 the LaPorte method; right?

19 A. That's correct.

20 Q. And you are aware, are you not, that
21 the Canada Border Services Agency uses a
22 procedure that is quite similar to that used by
23 Mr. LaPorte; right?

24 A. Oh, it's similar. It's not the same,
25 though.

1 L. Stewart

2 Q. I understand.

3 My question was, you are aware that
4 they use a procedure that is quite similar to
5 that used by Mr. LaPorte; correct?

6 A. I would say similar, not quite similar,
7 but yes.

8 Q. Okay.

9 But you are not prepared to testify
10 about that because you don't have those documents
11 and you don't have that information in your head;
12 is that right?

13 A. No. I did not receive a subpoena duces
14 tecum and I brought everything I thought I would
15 be talking about, which are all of my
16 declarations and depositions and then the
17 additional documents you guys requested. I did
18 not go beyond that, no.

19 Q. But you critique Mr. LaPorte's use of
20 his method for ink dating; right?

21 A. His method in this case for ink dating,
22 yes.

23 Q. But you are aware that there are a
24 number of agencies, including the Canada Border
25 Services Agency, that uses a procedure which you

1 L. Stewart

2 said is similar to the method he used for ink
3 dating; correct?

4 A. Yes. None of them use his procedure.

5 Q. You just testified they use a procedure
6 that is similar to his; yes?

7 A. Similar, yes.

8 Q. Now, can you describe step by step what
9 you call the LaPorte method?

10 A. Well, it's changed over the years. I
11 can go through what he originally reported in his
12 research that he published and we can look at
13 what he published in this case as far as his
14 technique.

15 Q. Why don't we talk about this case; okay?

16 A. Well, that doesn't answer your
17 question, then.

18 Q. Well, my question is describe step by
19 step what you describe as the LaPorte method that
20 was used in this case, that's my question.

21 A. Okay.

22 I can only partially answer that
23 because you did not give full disclosure of his
24 method. All I have is the printout from his
25 machine, I can only gain certain knowledge from

1 L. Stewart

2 that.

3 Q. Okay. Go ahead and describe it.

4 A. Would you hand me his declaration?

5 Q. You don't have a copy there?

6 A. No. I was not asked to bring that.

7 Q. Okay.

8 Let me ask -- we are going to hand that
9 to you in a moment -- do you know how many ink
10 samples Mr. LaPorte uses for each extraction
11 vial?

12 A. It's changed between his point of doing
13 his research and what he's reported he's done in
14 casework, so I don't know, it changes each time I
15 talk to him about it.

16 I do have three pages from his report
17 here that I did bring.

18 Q. Okay.

19 What pages is that?

20 A. I have 15, 16 of 26 and then his, one
21 of his exhibits which is the printout from the
22 machine.

23 Q. And page 15 and 16 is the section that
24 is titled "Ink Dating Analysis of the Writing
25 Inks on the Work For Hire Document"; is that

1 L. Stewart

2 right?

3 A. That's correct.

4 Q. So that is what I was going to hand to
5 you, it sounds like you have that in front of
6 you.

7 So you testified a moment ago that his
8 method changes each time you talk to him.

9 How often do you talk to him about his
10 method? What are you referring to?

11 A. Only in court cases, and I say talk
12 meaning in depositions and trials.

13 Q. When you're talking to him in those
14 depositions and trials?

15 A. No. I don't talk to him directly. I
16 am talking about reading his transcripts and
17 listening to him testify.

18 Q. Okay.

19 So let's focus on the ink-dating
20 analysis in this case outlined on pages 15 and 16.

21 Now, this is a discussion of ink-dating
22 analysis using a PE method that you are referring
23 to as the LaPorte method.

24 Have you had other cases involving PE
25 ink-dating testing with Mr. LaPorte?

1 L. Stewart

2 A. Yes, I have.

3 Q. What case was that?

4 A. There was one in Boston that we were
5 both involved in a year and a half, two years
6 ago.

7 Q. What was the name of that case?

8 A. I don't recall.

9 Q. Any others?

10 A. I may recall it if I think a moment.
11 It had to do with a union dispute for an
12 election, but I don't recall the case name at
13 this point.

14 Q. Okay.

15 So in this case how many ink samples
16 did he use for his extraction vial?

17 A. I don't see that he says.

18 Q. And it's your understanding that some
19 samples are unheated and others are heated under
20 the LaPorte method; right?

21 A. That's what he's testified to in the
22 past.

23 Q. Let's talk about the unheated examples
24 first.

25 What is your understanding of what

1 L. Stewart

2 Mr. LaPorte does in order to prepare ink samples
3 for the GCMS?

4 A. Well, he's very cryptic here. He says
5 he ran the test twice, that doesn't tell if he
6 ran it on two different samples or if he ran the
7 same vial twice or what twice means, so that I
8 can't define for you.

9 Q. My question is, what do you understand
10 he does in order to prepare the ink samples for
11 the GCMS?

12 A. He says absolutely nothing about
13 preparing them here.

14 Q. Do you know what kind of vial he uses
15 to extract the ink?

16 A. No, that's not been disclosed.

17 Q. Do you know what kind of solvent he
18 uses?

19 A. I know what he has said in the past he
20 uses, but in this case he has not disclosed it.

21 Q. Do you know how much solvent he uses?

22 A. No, he does not indicate that.

23 Q. You are familiar with the fact that
24 Dr. Aginsky also has an ink-dating method
25 involving phenoxyethanol; correct?

1 L. Stewart

2 A. Yes.

3 Q. Can you describe what his method is?

4 A. It's listed pretty accurately in one of
5 his publications, but I don't have that with me.

6 Q. How does Dr. Aginsky's method differ
7 from Mr. LaPorte's method?

8 A. Again, it's difficult to say what
9 Mr. LaPorte's method is, it wasn't disclosed in
10 this case. I have disclosure in other cases from
11 him where he's testified and I have his own
12 published research and it's changed between
13 those, so --

14 Q. And I understand that you keep
15 repeating that it's changed and it's difficult to
16 understand because it's not disclosed, but you
17 are providing an expert report that criticizes
18 that method, correct, Mr. LaPorte's method?

19 A. Yes, I criticize his method in this
20 case.

21 Q. Okay.

22 But I'm trying to focus in on what
23 exactly you are criticizing.

24 What is it that you think is incorrect
25 or wrong about his method? Can you be specific,

1 L. Stewart

2 please?

3 A. Yes. The published research and the
4 method today indicates that a number of factors
5 have not been properly researched in order to use
6 it in casework.

7 Q. Okay.

8 Let me pause there. I want to make
9 sure I understand exactly what you're saying.

10 The published research and the method
11 today indicates that a number of factors.

12 What -- can you be specific? What is
13 it that you're saying?

14 A. Certainly.

15 There are a number of articles, the
16 most recent one was published in 2010 concerning
17 the age method using PE for ink age determination.
18 Those methods outline specific methodology that
19 is not the same as the methodology that
20 Mr. LaPorte has testified that he uses and what
21 he put in his research that he uses.

22 Q. Right.

23 And so what specifically is your
24 criticism with respect to that article and the
25 LaPorte method?

1 L. Stewart

2 A. There's numbers. That article talks
3 about --

4 Q. Please point them out.

5 A. That article talks about the inherent
6 dangers are not knowing the effect of paper and
7 age considerations, it talks about
8 contaminations, it also talks about doing
9 studies, blind studies and research studies to
10 determine whether or not the test even works.
11 Those haven't been conducted yet and the studies
12 that have been conducted show that it's riddled
13 with fault, it's very easy to make mistakes, the
14 most recent being one that's --

15 Q. Let me pause you because you are
16 throwing a whole lot of stuff in there and I want
17 you to be specific.

18 What is the 2010 article that you are
19 referring to?

20 A. It is by Mr. -- if I can pronounce it
21 correctly -- it's referred to in my report, if
22 you just give me a moment.

23 MR. SOUTHWELL: The record should
24 reflect the witness is leafing through his
25 declaration.

1 L. Stewart

2 A. There's a couple. The one that just
3 came out in 2010, I'm still looking for that
4 citation, but the same author Weyermann, that's
5 W-e-y-e-r-m-a-n-n, et al., published an earlier
6 article that outlined a lot of the concerns in
7 2007, those same concerns were reiterated in his
8 2010 publication and nowhere in that publication
9 does he even reference Mr. LaPorte's method, he
10 simply talks about other methodology using PE.

11 Q. And what exactly is the criticism of
12 the PE methodology in the Weyermann article?

13 A. It's very simple. If you develop a new
14 test, a new technique, you must do studies to
15 show that that particular technique works before
16 you put it into a forensic scheme. You certainly
17 would not use it until you understand all the
18 parameters of it, and when you start changing
19 things like columns, ramps, temperatures, amount
20 that you use, that you extract from, solvents,
21 when you start changing things like that, you
22 change a lot and every bit of that needs to be
23 re-examined before put into casework; that's why
24 the Department of Justice, who he currently works
25 for, the Department of Secret Service, none of

1 L. Stewart

2 those agencies use the approach. You're only
3 going to find it used in some European
4 laboratories and the Canadians that you mentioned
5 and Mr. LaPorte and Mr. Aginsky.

6 Q. I see.

7 Mr. Aginsky's is one of plaintiff's
8 forensic document examiners; correct?

9 A. I don't know if he still is, but he was.

10 Q. Okay.

11 You testified earlier that he was, so I
12 guess I was just going based on what you said.

13 A. I testified that you would have to ask
14 the lawyers. I'm not sure if he is still
15 involved in the case.

16 Q. Okay.

17 I think you testified that you believed
18 he was, but that's fine.

19 And so the Canadians and the Europeans,
20 they apparently don't know what they're doing; is
21 that your opinion?

22 A. No. They know exactly what they're
23 doing. They're actually doing studies on their
24 approach and they're showing many limitations
25 even within their own approach to the point that

1 L. Stewart

2 they're saying in a lot of cases they would not
3 use it in casework.

4 Q. And where exactly are they saying in a
5 lot of cases they would not use it in casework?

6 I need you to be very specific, Mr.
7 Stewart, because what you are doing is you are
8 throwing out these very broad generalizations,
9 studies show it's riddled with fault, and you're
10 not being specific, so I don't know how the Court
11 can evaluate your opinion unless you are specific
12 about what you are saying.

13 You can't just paint with a broad brush
14 without being very specific, so I'm asking you,
15 please, to be specific, and not just throw out
16 statements like they said, you know, studies say
17 it's riddled with fault.

18 Can we agree that you can try to do
19 that, please?

20 A. I am trying to. I will tell you my
21 limitation. I have 370-something pages of
22 reports that I've issued and exhibits, I was not
23 given prior knowledge of what to bring to this
24 other than assumption, that we were going to talk
25 about that, and now you're asking me other

1 L. Stewart

2 questions, so I can either take time to go
3 through my report and my documents and show you
4 those articles there and direct your attention to
5 it, but I believe if you read my report and you
6 see where I cited those articles you'll see
7 exactly what I'm talking about. I'm trying now
8 to go back to those articles and show them to you
9 again.

10 Q. I'm trying to ask questions about your
11 report because frankly I found it very nonspecific
12 about what the actual criticisms were other than
13 your claim that the PE tests had not been
14 validated, so let me ask a specific question
15 about that.

16 You criticize the validity of
17 LaPorte's method; right?

18 Can you explain what part of the PE
19 testing that LaPorte conducted you believe has
20 not been validated?

21 A. None of it has.

22 Q. None of it has?

23 A. It's not used by the Federal Government.

24 Q. So none of the LaPorte method has been
25 validated; is that what you're saying?

1 L. Stewart

2 A. That's correct. There's no standard --

3 Q. How has it not been validated?

4 A. -- there is no federal agency using the
5 approach, it's not been validated.

6 Q. I'm not asking about what agencies are
7 using it or what agencies are not. Please listen
8 to the question.

9 My question is what part of the tests,
10 the methods you believe have not been validated,
11 and you said all of it; right?

12 A. That's correct. That's no --

13 Q. The next question is, how is the
14 testing method validated? What's required?

15 MR. BOLAND: Objection.

16 A. Well, first you have to have a method
17 that you stick with instead of changing it every
18 couple weeks. Once you come up with a method
19 that you think works, you have to publish that
20 with sufficient information that people can do
21 peer-reviewed studies.

22 That's never happened with his
23 technique. The only time he came close to that
24 was in his article, I believe, in 2004, where he
25 outlines his approach, but he's deviated from

1 L. Stewart

2 that approach many times since then, as recently
3 as a couple of months ago in a case that he was
4 deposed and he deviated from it.

5 Q. And your testimony is that he deviates
6 from it every two weeks? That's what you just
7 testified; yes?

8 A. No. I didn't say he.

9 You asked specifically how do you go
10 through and validate a study or validate an
11 approach. I'm telling you if you make changes to
12 that approach that means you start all over
13 again. If you have a consistent approach that
14 you feel is valid, you then put that out to your
15 peers and have it reviewed, you have studies done
16 to show does it work, can it be reproduced in
17 multiple laboratories using that same technique
18 and that has not occurred here, so that, based on
19 my time as a laboratory director for a leading
20 law enforcement agency, that's why it's not used.

21 Q. I see.

22 And when I asked you how is the testing
23 method validated and you answered you have to
24 stick with a method instead of changing it every
25 couple weeks --

1 L. Stewart

2 A. Right.

3 Q. -- you're saying that Mr. LaPorte
4 changes it every couple weeks?

5 A. No. I did not put his name in there.
6 I said that if you change a --

7 Q. We're talking about Mr. LaPorte's
8 method.

9 A. Okay.

10 And you asked me a specific question,
11 how do you validate an approach. You can't
12 change that approach. You have to sit there and
13 come up with a technique you think works. You
14 then have to put that out there to your peers and
15 you have to show the entire recipe of how it's
16 done and then you have to allow people to see
17 does it works or not work; that hasn't occurred
18 here.

19 Q. You're saying a part of the LaPorte
20 method uses GCMS; right?

21 A. Yes.

22 Q. Are you saying that GCMS is not a valid
23 instrument for testing chemicals?

24 A. No, I am not saying that.

25 Q. That has not been validated?

1 L. Stewart

2 A. No. It has nothing to do with the
3 machine.

4 Q. Because you just mentioned a few
5 minutes ago that all of Mr. LaPorte's method has
6 not been validated and that, you just testified,
7 is part of Mr. LaPorte's report and in fact it
8 has been validated, so I guess I'm not really
9 clear what exactly is your testimony.

10 Are you saying that all of it has not
11 been validated or are you saying that parts of it
12 have not been validated?

13 Please be specific.

14 A. I believe his technique for using a
15 microscope has been validated, I believe his
16 technique for using ultraviolet light and
17 infrared light to do chemical analysis has been
18 validated, his method for identifying ink has
19 been validated, those are all things that are
20 discussed in standards.

21 Q. And what are the parts that you are
22 saying specifically that have not been validated
23 as part of the LaPorte method?

24 A. Using a GC mass spec to look for
25 2-phenoxyethanol using his specific methodology

1 L. Stewart

2 has never been validated.

3 Q. And what is his specific methodology
4 that you are saying has not been validated to
5 look for 2-phenoxyethanol?

6 A. I can only go by what he put into this
7 report, which is very cryptic, or what he's
8 testified to as recently as a month or two ago.
9 If you would like me to bring that out, we can
10 talk about that.

11 Q. As you sit here today, you can't say
12 what it is that you think has not been validated
13 in his approach?

14 A. I can say that his methodology that he
15 testified to recently is not the same as the
16 methodology that's discussed by the most recent
17 articles on the subject and none of them refer to
18 the LaPorte method.

19 Q. And what specifically about the
20 methodology are you referring to?

21 A. Again, I have to pull it out to look at
22 it to show you that.

23 Q. So you don't know, you can't testify to
24 that as you sit here today?

25 A. Off the top of my head, no; it's a very

1 L. Stewart

2 difficult technique.

3 Q. Do you understand the difference
4 between a static and dynamic approach to dating
5 inks?

6 A. Yes.

7 Q. And a static approach relies on
8 characteristics of the document that will not
9 change and allow for dating; right?

10 A. Say that again?

11 Q. A static approach relies on
12 characteristics of the document that will not
13 change and that allows for dating; right?

14 So I will give you an example.

15 You identify the components of a
16 formulation of ink in a static approach; right?

17 A. Right, but that doesn't date the ink.

18 Q. I understand.

19 But it could date the ink if perhaps
20 there is ink that has a known introduction date
21 or a marker inserted by the manufacturer; correct?

22 A. Correct.

23 Q. And that would be a static approach;
24 right?

25 A. Yes.

1 L. Stewart

2 Q. And a dynamic approach relies on how a
3 document changes over time; right?

4 A. Yes.

5 Q. In a dynamic approach one measures
6 physical or chemical properties that change over
7 time; right?

8 A. Correct.

9 Q. Contrary to the static approach and the
10 dynamic approach, one does not necessarily use a
11 library of standards; right?

12 A. I disagree with that.

13 Q. Well, it's not necessary to identify a
14 particular formulation of ink in a dynamic
15 approach; right?

16 A. I disagree with that.

17 Q. Let's -- are you familiar with Exhibit
18 20 of your report?

19 A. Yes, sir.

20 Q. This is an article by Valery Aginsky in
21 the Journal of Chromatography?

22 A. Yes, sir.

23 Q. And you cite this article in your
24 report and you've attached it as Exhibit 20;
25 right?

1 L. Stewart

2 A. Correct.

3 Q. And you've read it?

4 A. Yes.

5 Q. This is a reliable authority; correct?

6 A. Yes. It's dated, but it's reliable at
7 the time.

8 Q. And on the first page of the article
9 the article states that discrimination between
10 fresh, age less than several months, and old
11 ballpoint ink entries and it does not need dated
12 reference entries written with ink having the
13 same formula as that of the questioned ink.

14 Did I read that correctly?

15 A. You are cutting off the sentence.

16 He's talking about a specific procedure
17 that he's outlining in this research and he says
18 the procedure allows discrimination between fresh
19 and then forward, so --

20 Q. And what he says is you do not need a
21 dated reference entry?

22 A. That's what he's saying, yes.

23 Q. Right.

24 And so this is a reliable authority
25 that you cite that establishes that one does not

1 L. Stewart

2 need to identify the ink formula in a dynamic
3 approach?

4 A. No. I cited it, I cite certain aspects
5 of it, I don't necessarily agree with everything
6 in it. That's one thing I don't agree with. I
7 think it is very important to identify the ink
8 composition before you do any of the dynamic
9 approaches.

10 Q. Do you have any articles that agree
11 with your position that you need to identify the
12 ink before using a dynamic approach to ink
13 dating?

14 A. It's articles that I publish, but if
15 you want people publishing them, I believe there
16 have been, but I'd have to go and check that, I
17 don't know.

18 Q. You can't point to any that say that
19 other than the ones that you've written; right?

20 A. As we sit here right now, no, I cannot
21 point to them.

22 Q. And the PE test is a dynamic approach;
23 right?

24 A. Given the scope of your question, it is
25 a portion of a dynamic approach.

1 L. Stewart

2 Q. And your report cites to the article by
3 Gerry LaPorte on the identification of
4 2-phenoxyethanol in ballpoint inks, and it goes
5 on, but an example of that is Exhibit 10 to your
6 report, right, you cite to that article?

7 A. Yes, I cite that article.

8 Q. You attach it as Exhibit 10; right?

9 A. Yes.

10 Q. You also attach part of it as Exhibit
11 11 of your report; right?

12 A. Yes, that's part of Exhibit 11.

13 Q. And you also attach part of it as
14 Exhibit 23 to your report; yes?

15 A. Yes.

16 Q. Can I ask why it is you are citing and
17 including this article and portions thereof in
18 three different exhibits to your report?

19 A. Because I thought it was easier for the
20 Court because I would it references in one
21 exhibit as opposed to making the Court go back to
22 two or three different exhibits.

23 Q. It wasn't meant to bulk up your report?

24 A. I was trying to make my report smaller,
25 actually.

1 L. Stewart

2 Q. You've read this article; yes?

3 A. Yes.

4 Q. And the article discusses a dynamic
5 approach to ink dating; right?

6 A. If you want to direct me to where it
7 talks about dynamic, that it would make it
8 quicker, otherwise I can read it.

9 Q. Well, it talks about the fact of doing
10 ink dating based on how a document changes over
11 time, which, as you agreed earlier, is a dynamic
12 approach; yes?

13 A. Yes. I just don't know if he -- he
14 does refer to it as a dynamic approach on page 2,
15 the first line.

16 Q. And this article talks about using GCMS
17 to detect PE in ink samples; correct?

18 A. That's correct.

19 Q. And the method described in the article
20 is extremely similar to the method that LaPorte
21 used here with the Work For Hire contract; right?

22 A. I have no way of knowing, it's not been
23 discovered or disclosed.

24 Q. Now let's turn to page -- I am sorry,
25 paragraph 358 of your report. There you quote

1 L. Stewart

2 from an article by Berger-Karin which you have
3 attached as Exhibit 25 of your report; right?

4 A. I believe you said 358, it's 357, but
5 yes.

6 Q. All right.

7 So the cite you have here is 357,
8 actually, and I take it back, this is commentary
9 on the Berger-Karin article, but it is actually
10 by Weyermann; correct?

11 A. That is correct.

12 Q. Earlier you referred to Weyermann as a
13 male.

14 Was that accurate?

15 A. I don't know. I've only spoken with
16 the person via e-mail. I think I've only seen
17 their first name as an initial, so I'm not sure
18 if it is male or female.

19 Q. You can see down at the bottom of this
20 article which you have and you cite in your
21 report that her name is Celine.

22 Do you see that?

23 A. I have seen males named Celine as well.
24 I don't know.

25 Q. Now, you refer to this article in 357

1 L. Stewart

2 and in 358 you purport to quote from it; correct?

3 A. Yes.

4 Q. And paragraph 358 of your report, you
5 start "They concluded," and the they here refers
6 back to the article by Weyermann; correct?

7 A. There's two different referrals there.
8 357 begins with in 2009 there is a notation there
9 about one of their findings, and then that is
10 referred back to a 2008 publication.

11 Q. Okay.

12 Well, you have a quote here.

13 Where is this quote from?

14 A. I don't know. Let me look for it.

15 Q. Well, maybe I can make it a little
16 easier.

17 Let's look at the last line of this
18 Exhibit 25, which is to the right-hand side of
19 the first page.

20 Do you see that there is a quote or
21 there is a section there in italics and that is
22 in fact what you are purporting to quote from in
23 paragraph 358 of your report?

24 A. Yes.

25 Q. And do you see that in paragraph 358 of

1 L. Stewart

2 your report you purport to quote from this
3 article by saying, quote, "Forensic scientists
4 should not attempt to examine actual criminal or
5 civil cases until they (the methods to include
6 unvalidated PE method, e.g., reports) have been
7 tested"?

8 A. That's correct.

9 Q. Do you see that?

10 A. Yes.

11 Q. And so do you see in 358 of your
12 paragraph you are representing to the Court that
13 this author has made this statement in the
14 article and in fact is criticizing specifically
15 Mr. LaPorte; right? That's in 358 of your
16 report?

17 A. If that's the inference, I'm sorry for
18 that. There should have probably been a quote at
19 the end of "they" and at the beginning of "have."

20 The part in the parentheses is my
21 continuation of the thought of what I was
22 discussing before and after that.

23 Q. Right.

24 So paragraph 358 of your report is
25 inaccurate; correct?

1 L. Stewart

2 A. Grammatically, maybe, not in content.

3 Q. Well, if you are purporting to quote
4 from an article and you have inserted words that
5 are your own that are not in the article, you
6 will agree with me that they are not in the
7 article; right?

8 The words "the methods to include
9 unvalidated PE methods, e.g. LaPorte's, those are
10 not in the article Exhibit 25; correct?

11 A. No. Those are my words there that
12 probably should have been taken out of the
13 quotation.

14 Q. Right.
15 You have inserted those into a
16 quotation purporting to be from an article by
17 Weyermann; right?

18 A. Yes.

19 Q. And that is inaccurate, correct,
20 because that's not in fact in the article?

21 A. The part in parentheses is not in the
22 article, those are my words.

23 Q. So paragraph 358 is inaccurate; correct?

24 A. No, I think it's very accurate. It's
25 not accurate as far as what he said. It's --

1 L. Stewart

2 Q. It's accurate, huh? It's accurate --

3 A. Yes, it's accurate.

4 Q. -- because it is a quote from a book
5 where you insert -- a quote from an article where
6 you insert your own words into the quote and you
7 are telling the Court that that's accurate?

8 A. No. Grammatically this should be been
9 structured differently, so grammatically it's
10 inaccurate. The content is accurate as far as
11 what they said and what I'm saying in my report.

12 Q. Grammatically it's inaccurate?

13 A. Right.

14 Q. So if I were to quote from your report
15 and put my own words into the middle of it, that
16 would only be grammatically incorrect?

17 A. I would have to see --

18 Q. If I were to tell the judge Mr. Stewart
19 testified at his deposition that the Work For
20 Hire document is a fraud, if I told the judge
21 that, but I had inserted the part "was a fraud"
22 that would simply be grammatically incorrect?
23 Wouldn't that be actually incorrect?

24 A. In that case it would be actually
25 incorrect. That's not what's happening here.

1 L. Stewart

2 Q. It's not what's happening here?

3 Look at 358. They conclude it by
4 emphasizing that quote and then you purport to
5 have a quote from the article.

6 You are telling us this is not a
7 representation to the Court that this is a quote
8 from an article?

9 A. It is a quote from an article minus the
10 part that I've got in parentheses and that was
11 done incorrectly. I should have done that a
12 different way.

13 Q. So the quote is inaccurate, correct?

14 A. Yes.

15 Q. Okay.

16 It's very hard for you to admit that
17 you're wrong; is that right?

18 MR. BOLAND: Objection.

19 A. I do not agree that that's a wrong
20 statement.

21 Q. It's not a wrong statement to quote
22 erroneously from an article, to represent to the
23 Court that they are criticizing the LaPorte
24 method when in fact that's not what they are
25 doing?

1 L. Stewart

2 A. That part is wrong and it's the
3 grammatical part that I should have done
4 differently. The content of the paragraph I do
5 not believe is wrong, I believe it's accurate.

6 Q. You believe it's accurate that
7 Weyermann in their article published in the
8 Journal of Forensic Science has said that the
9 methods in the specified LaPorte's method, you
10 think that's accurate, huh?

11 A. What I believe is accurate is that
12 forensic scientists should not attempt to examine
13 actual criminal or civil cases until they have
14 been tested and that is the method that includes
15 LaPorte's unvalidated PE test, I think that that
16 is a very accurate statement.

17 Q. But paragraph 358 purports to be a
18 quote to the Court, you are representing that
19 this is what someone else has said; right?

20 A. And I apologize for that, I did that
21 incorrectly there.

22 Q. Okay.

23 So that is an inaccurate quote; right?

24 A. Yes, it's an inaccurate quote.

25 Q. Now, in your report you also stated

1 L. Stewart

2 that you prohibited Mr. LaPorte from using his
3 methods for ink dating in casework while you
4 supervised him at the Secret Service; right?

5 A. Our policies prohibited it and I was in
6 charge of the policy, so yes.

7 Q. You actually say at paragraph 210,
8 quote, "I prohibited him," close quote.

9 Am I being accurate in how I quoted
10 your report?

11 A. And as I just explained to you, I did
12 prohibit him by being in charge of the system and
13 it was our policy.

14 Q. How did you prohibit him?

15 A. We had a policy that any untested and
16 unreliable forensic tests could not be used in
17 actual casework until it was reviewed by our
18 peers and authorized by the laboratory director
19 and that was me.

20 Q. And did the policy specifically
21 prohibit him from using this test, i.e., the PE
22 test in casework?

23 A. Yes.

24 Q. Specifically it referred to the PE test
25 and it prohibited him from doing that?

1 L. Stewart

2 A. We referred to any test that was
3 outside of our scope, so that would be one of
4 them.

5 Q. Let's read paragraph 210 together,
6 okay?

7 "These are the core of the reasons I
8 prohibited him from using this test in casework
9 when I supervised him at the U.S. Secret
10 Service."

11 Did I read that accurately?

12 A. Yes, that's accurate.

13 Q. How did you prohibit him from using
14 this test? What does this test refer to? This
15 test refers to his ink-dating method that you're
16 referring to in this section of your report;
17 right?

18 A. That's correct.

19 Q. So how specifically, please be
20 specific, did you prohibit him from using this
21 test, his ink-dating method in casework?

22 A. Well, that was included in a recent
23 filing to the Court, it had the actual scope of
24 what was allowed at the Secret Service under my
25 direction, it showed that any technique that was

1 L. Stewart

2 not within that scope was not allowed until it
3 was peer reviewed and it was accepted for use in
4 tests -- in casework by me. I included that in a
5 recent filing to the Court.

6 Q. And what specifically is that that you
7 are referring to?

8 A. That is the standard operating
9 procedures for the Secret Service questioned
10 document branch.

11 Q. Does that refer to the ink-dating
12 method with specificity?

13 A. It refers to any ink-dating method
14 outside of the scope and this was one of those,
15 so, yes, it refers to all ink-dating methods that
16 aren't within the scope.

17 Q. Listen very carefully to my question
18 and please be specific in your answer.

19 Is it a policy that specifically
20 prohibits Mr. LaPorte or anyone else from using
21 the ink-dating method that you referred to as the
22 LaPorte method, yes or no?

23 A. Yes.

24 Q. It specifically says you are prohibited
25 from using the LaPorte ink-dating method?

1 L. Stewart

2 A. It specifically says any method and
3 that is a method, so I can't --

4 Q. I understand what you are saying,
5 but -- okay.

6 A. I can't anticipate what methods may be
7 thought up in the future by examiners to be used
8 on casework, I can only go by what's in the scope
9 and then they have to be peer reviewed.

10 Q. You're saying that there was a policy
11 that any method that hadn't been tested and peer
12 reviewed could not be worked in casework, that's
13 what you're pointing to; correct?

14 A. Yes, any new method.

15 Q. Any new method.

16 So you're not saying -- well, let me
17 back up.

18 Who wrote that policy?

19 A. It was written under my predecessor
20 Chief John Hargett at my direction prior to our
21 first ASCLD accreditation, so that would have put
22 it back, I'm guessing, somewhere around 2003 or
23 so.

24 Q. And the policy prohibits use of any new
25 untested method in casework; correct?

1 L. Stewart

2 A. Yes.

3 Q. And you are testifying that that means
4 that it prohibits the LaPorte ink-dating method
5 because that falls within the scope; right?
6 That's your specific statement; correct?

7 A. Yes, it prohibited using that in
8 casework.

9 Q. And that's the policy that you provided
10 to the Court in this case; right?

11 A. Yes.

12 Q. That is not a policy that prohibits
13 anyone from specifically using the ink-dating
14 method that is discussed in your report; correct?

15 A. You've got to rephrase that one.

16 Q. Which part of it don't you understand?

17 A. I don't understand any of it.

18 Q. Okay.

19 Your statement here on 210 is I
20 prohibited him from using this test in casework.

21 My question is, how did you prohibit
22 him from using this test, and I guess what I'm
23 hearing you say is there was a general policy
24 that said any untested methods are not to be
25 used.

1 L. Stewart

2 That's what you are referring to when
3 you say I prohibited him from using this test; is
4 that right?

5 A. No. There was not a general policy,
6 there was a standard operating procedure and that
7 standard operating procedure dictated what could
8 and could not be used in casework.

9 This fell -- his technique falls
10 outside that, it fell outside that while I was
11 there and it was never allowed to be used, so in
12 fact I prohibited him from using it.

13 Q. And you are saying the standard
14 operating procedure -- you would concede, would
15 you not, that the standard operating procedure
16 does not name this ink-dating test with
17 specificity; yes?

18 A. No. It does it in a more universal
19 approach and says any, any technique outside of
20 this.

21 Q. And so you still believe I prohibited
22 him from using this test is an accurate statement
23 to the Court?

24 A. Yes, it is, yeah, very accurate.

25 Q. All right.

1 L. Stewart

2 Now, in the course of your work in the
3 Secret Service you signed off on certain reports
4 that Mr. LaPorte submitted while he was there;
5 right?

6 A. I wasn't his immediate supervisor, I
7 don't know if I signed off any of his reports,
8 I'm not sure.

9 Q. You don't know if you did?

10 A. It would have been unusual for me to
11 sign his reports, so I don't know if I did or not.

12 Q. I'm not asking you whether you signed
13 his reports specifically, I'm asking whether you
14 signed off on his reports, in other words, you
15 were the supervisor of the lab at the time.

16 A. I have to explain that.

17 There's an administrative and a
18 technical review that's done on all employees who
19 issue reports; it's possible that I conducted
20 either of those in a case involving him, but it
21 would not have been normal in that I wasn't his
22 first-line supervisor.

23 Q. Isn't it a fact that among those
24 reports that you signed off on were reports where
25 Mr. LaPorte used PE testing as an ink-dating

1 L. Stewart

2 method; correct?

3 A. No. As I just testified, I don't
4 recall ever signing off on any of his reports.
5 If I did, it would be unusual and the only time I
6 ever recall him using the technique under my
7 direction was an after-the-fact situation, in
8 other words, we had already reached a conclusion
9 in a case, we had already reached an opinion and
10 we were looking to see if the technique reached
11 the same opinion or not; that's different than
12 putting it into a report and putting it out there
13 in a case.

14 Q. I understand the difference you are
15 drawing, then.

16 But you did a technical review of his
17 analysis in at least two cases where he did PE
18 testing for ink dating; right?

19 A. I don't know that, I don't know.

20 Q. You don't know that you did a technical
21 review of two cases where you approved of his use
22 of ink dating?

23 A. I did not approve his use of ink dating
24 in any case to be issued in a report. There were
25 instances, as I mentioned, in research where he

1 L. Stewart

2 used it after the fact; that's different than
3 what you are describing, though, with me
4 approving it in a report or in a case. I did
5 not.

6 Q. There were instances, then, when it was
7 used, you're distinguishing from when it was used
8 in a report, and there were at least two
9 instances where it was used and you approved it;
10 correct?

11 A. No. Those are your numbers and I'm
12 telling you I don't recall that. It would be
13 highly unusual and if it was, the only
14 recollection I have is allowing him to do it in
15 cases as an after, an after-test when we did not
16 need it and utilize it in reaching the report.

17 Q. I see.

18 Let me ask you some questions about the
19 examination you did in this case.

20 What were you tasked with in terms of
21 forensic examination of the document?

22 A. Separate from overseeing the forensics?

23 Q. Did you have any specific tasks that
24 you were given with respect to forensic
25 examination of the document?

1 L. Stewart

2 A. I wasn't given tasks. I was -- since I
3 was directed to put together a forensic team and
4 an analysis scheme, I directed people within that
5 group as to what they would conduct and what I
6 would conduct separately.

7 Q. And so you put together the forensic
8 team, is that right, as you just said?

9 A. Midstream I did. I didn't put together
10 the initial team, I put together the team that we
11 have now.

12 Q. And who's included in that team?

13 A. Right now I know of Mr. Blanco, myself,
14 Mr. Rantanen, and there's two computer folks that
15 I do not have any involvement in, but I know that
16 they are the team as well.

17 Q. How about Mr. Speckin? He's on the
18 team. Did you put him on the team?

19 A. No. I don't recall if I originally
20 suggested him or if he was already on the team.

21 Q. What's your opinion of Mr. Speckin?

22 A. He's a nice gentleman, he's had some
23 controversy in his casework in the past.

24 Q. What's your opinion of his professional
25 capabilities?

1 L. Stewart

2 A. I have known him to be very capable,
3 but I've also known instances where he has gone
4 too far and I think that that may be where he has
5 gotten into some situations in the past.

6 Q. Where he's been sloppy; is that right?

7 A. No. Kind of what I'm reporting in this
8 case, using a technique that shouldn't have been
9 used and gone too far with it.

10 Q. So you did not include Mr. Aginsky and
11 Mr. Osborn as part of the team you selected.

12 Are you aware of why they did not issue
13 a report in this case?

14 A. No, I'm not.

15 Q. Are you aware of why Mr. Speckin did
16 not issue a report in this case?

17 A. No, I'm not.

18 Q. What was your role for the forensic
19 document examination as contrasted to Blanco or
20 Speckin or the computer forensics experts?

21 A. I directed Mr. Speckin to do the
22 chemical analysis of the ink with potential
23 follow-up of any age analysis if we went that
24 route. I directed Mr. Blanco to do the
25 handwriting analysis, the analysis of the staple,

1 L. Stewart

2 the general analysis of the document, the
3 indentations and the interlineation, I examined
4 the document in general, I looked to see if the
5 two pages were together, bound together, or if
6 they came from two different sources; I also
7 looked at the staple, I also looked at the
8 interlineations and then I addressed the ink
9 issues. I also did the toner analysis and
10 directed sending the paper out for testing.

11 Q. Right.

12 And Mr. Speckin, he has got a GCMS
13 machine; right?

14 A. Yes, he does.

15 Q. And he does PE ink-dating testing;
16 right?

17 A. He has in the past. That's not the
18 direction that I would have had him go in this
19 case if we had chosen to do ink-age determination.

20 Q. Did he do ink-age determination?

21 A. I don't know if he did in this case or
22 not.

23 Q. Did you ask him?

24 A. No, because his connection to me in
25 this case involving what he did and didn't do has

1 L. Stewart

2 been disconnected the past number of months, so I
3 don't have a current connection with him on this
4 case.

5 Q. What exactly do you mean by that, your
6 connection to him has been disconnected?

7 A. Once we decided that ink-age analysis
8 wasn't feasible, then it wasn't important for him
9 to issue any additional work in the case, so we
10 continued at that point with Mr. Blanco and
11 myself doing the lion's share of the forensic
12 work.

13 Q. You testified that we decided ink-age
14 analysis wasn't feasible.

15 Who's we?

16 A. Well, on our side I decided, on your
17 side Mr. Lyter decided.

18 Q. I'm asking who is we.

19 You said we decided that ink-age
20 analysis wasn't feasible.

21 Who is we?

22 A. It would have been myself when I was --

23 Q. You decided that?

24 A. I shouldn't have included Lyter in
25 that, it should have been just me.

1 L. Stewart

2 Q. Okay.

3 And as you said before, I think,
4 Mr. Speckin apparently told you that it was --
5 well, let me ask you this: Did Mr. Speckin tell
6 you that he had come to any conclusions about ink
7 dating?

8 A. He told me that he had come to
9 conclusions about ink analysis and identification,
10 and when he told me he could not identify the ink
11 because of its deterioration that is, I believe,
12 the end of the work that he did. You would have
13 to ask the lawyers for further information;
14 that's the last I know of.

15 Q. So you didn't interact with him anymore
16 after that?

17 A. I have on other cases. I have not
18 interacted with him about his findings in this
19 case.

20 Q. Is everything you did as part of your
21 examination spelled out in your report?

22 A. I doubt it.

23 Q. Are all the tests that you ran detailed
24 in your report?

25 A. The tests that yielded a finding are

1 L. Stewart

2 detailed in the report, yes.

3 Q. So what other tests did you run that
4 didn't yield a finding?

5 A. Let me think.

6 I examined the interlineation to see if
7 it matched up with the indentations. I did not
8 include that in the report because it was
9 something that Mr. Blanco had already addressed
10 and so there was no point in me including that.

11 Q. Did you disagree with Mr. Blanco's
12 results?

13 A. No.

14 I did not include anything in my report
15 to a great extent regarding the staples because
16 Mr. Blanco addressed that, although I did agree
17 with his results and likewise with the
18 handwriting analysis, he addressed that and I
19 agreed with his results, so it was not important
20 to put in my --

21 Q. And what specific tests did you run?
22 You did thin-layer chromatography; yes?

23 A. Yes.

24 Q. You did not do gas chromatography or
25 mass spectrometry; correct?

1 L. Stewart

2 A. No, I did not.

3 Q. You did examination with a video
4 spectral comparator; yes?

5 A. On site Mr. Speckin and I did, yes.

6 Q. Who actually did the VSC examination?

7 A. We both did.

8 Q. Who operated the VSC machine?

9 A. Well, we were both there in front of
10 it. I don't recall who pushed the button.

11 Q. Did you do that at the same time?

12 A. Yes.

13 Q. Did you conduct microscopy?

14 A. Yes.

15 Q. You also stated in your report you
16 conducted a physical analysis.

17 What did that include?

18 A. Visualizing the document, just looking
19 at it using various light sources, scanning in
20 the document, making notations about the
21 document.

22 Q. And you said also in paragraph 89 that
23 you conducted a chemical analysis of the toner,
24 and that was just a TLC analysis; correct?

25 A. It was largely a TLC analysis.

1 L. Stewart

2 Q. When you say largely, what else was it?

3 A. Well, it starts with a microscopic
4 examination of the document to determine if it is
5 toner, then a determination is made as to whether
6 or not it is single-color toner versus toner from
7 a machine that uses multiple colors of toner, and
8 then there's a physical removal of the toner and
9 then comparison against a library of standards,
10 and that's done using primarily thin layer
11 chromatography.

12 Q. Let's talk about your opinion about the
13 toner.

14 First of all, the defendants' experts
15 made some comments about toner and printing,
16 Mr. LaPorte in his report stated he was able to
17 chemically differentiate the toners on each page
18 of the Work For Hire document using TLC analysis;
19 right?

20 A. I believe that's what he said, yes.

21 Q. And he provides a detailed description
22 of how he differentiated the toners, noting the
23 two differences that he says demonstrate the
24 toners have different ingredients; right?

25 A. You're reading it. He said something

1 L. Stewart

2 like that.

3 Q. Specifically on page 12 of his report
4 he says the two toners dissolve differently in
5 the same solvent and the two toners streak
6 differently on the developed TLC plate and
7 diffuse differently from the point of origin;
8 right?

9 A. I believe he said something like that.

10 Q. And Professor Romano in his report
11 stated that two different laser printers were
12 used to print page 1 and page 2 of the Work For
13 Hire document; right?

14 A. Yes, that's what he says.

15 Q. And he states the basis for his
16 conclusion; right?

17 A. Yes.

18 Q. Now let's talk about your opinions
19 about the toner and the printing.

20 First of all, you agree with the
21 defendants' experts that the printing was black
22 toner from a laser machine at 600 DPI; right?

23 A. It could have been a laser -- at the
24 point of the initial examination it could have
25 been a laser printer or it could have been a

1 L. Stewart

2 laser copier.

3 Q. Well, I just said a laser machine at
4 600 DPI.

5 You are not disputing that the printing
6 was black toner from a laser machine at 600 DPI?

7 A. I am not disputing that it was small
8 size toner, it would have been 600 DPI.

9 Q. But you do counter Mr. LaPorte's
10 conclusion that the toner on the two pages was
11 different; right?

12 A. Yes.

13 Q. And it's your position that the toners
14 match; right?

15 A. Yes.

16 Q. And you state at paragraph 93 that this
17 is based on your, quote, "exhaustive physical and
18 chemical testing"; right?

19 A. Yes.

20 Q. And you mentioned specifically TLC and
21 microscopy; right?

22 A. I believe so, yes.

23 Q. Was there anything else included in
24 your exhaustive testing?

25 A. Comparison against the library of

1 L. Stewart

2 standards and creation of the library, that type
3 of thing.

4 Q. Okay.

5 And in your microscopy examination of
6 the toner did you actually use a stereo
7 microscope?

8 A. On site, no, I did not.

9 Q. What did you use on site?

10 A. I used the VSC scanned image, I used my
11 own eye and some microscopic devices that I took
12 with me. I do not believe that I took a digital
13 microscope -- I'm trying to think -- and so it
14 would have been scanned images.

15 Q. I'm talking about the actual document,
16 the physical actual document. You used a
17 hand-held microscope; right? That was your
18 microscopy examination of the toner; yes?

19 A. At that time and then that was
20 furthered when I went back to my laboratory.

21 Q. Well, you didn't have the original
22 document back in the laboratory, did you?

23 A. Didn't need it. I had the plugs that I
24 took.

25 Q. And what were the -- you had -- you

1 L. Stewart

2 developed TLC plates of the toner; right?

3 A. Yes.

4 Q. And then you claim that you matched the
5 TLC results with the toner from your toner
6 library; is that right?

7 A. That's correct.

8 Q. Can you name a study that validates the
9 use of TLC analysis on black toners to identify
10 the manufacturer of a printing device used to
11 produce a questioned document?

12 A. The standard operating procedures for
13 the Secret Service questioned document laboratory.

14 Q. Is that a peer-reviewed study?

15 A. Yes, internally peer reviewed.

16 Q. Any other study that has been published
17 externally that validates the use of a TLC
18 analysis on black toners to identify the
19 manufacturer of a printing device used to produce
20 a questioned document?

21 A. Yes, I believe there was one by Cantu
22 where he talks about the use of TLC to analyze
23 and identify toner.

24 Q. And which article is that?

25 A. It's in one of my exhibits. I'll look

1 L. Stewart

2 for it.

3 Q. Let me help you out.

4 You cite Exhibit 5 in your report, you
5 cite to an article by Dr. Cantu in support of
6 your toner identification; right?

7 A. Do you want to direct me to that,
8 please?

9 Q. Exhibit 5.

10 A. Exhibit 5, yes, I believe that's the
11 article.

12 Q. And the Secret Service study that you
13 are referring to, that's for color toner, not
14 black toner; right?

15 A. No. Well before Mr. LaPorte worked
16 there we developed a system for doing black-only
17 toner, we also had a system for doing
18 monochromatic or toners that were specific colors
19 and we developed a library of standards many
20 years back and we used that throughout the years,
21 so it was black-only, it was monochromatic and
22 later on it was three- and four-color systems.

23 It's gotten much easier with the new
24 technology, but in the old days we did it the
25 earlier method.

1 L. Stewart

2 Q. Now, the Cantu article that you're
3 referring to here is talking about the type of
4 toner, right, it discusses identifying
5 characteristics and features of toner; correct?

6 Let me ask you more specifically.

7 The article talks about characteristics
8 and features of toners, it does not mention
9 identifying a printer, manufacturer or even a
10 cartridge; is that right?

11 A. It does not mention a cartridge, it
12 talks about how some black toners contain
13 extractible dyes and that those can be identified
14 and characterized by TLC, separated and
15 characterized, I'm sorry, by TLC.

16 Q. And it recites that most of the
17 chemical information in black toners is in the
18 organic resins used; correct?

19 A. I agree with that, yes. I didn't say
20 it was easy. It's difficult.

21 Q. And what tests did you conduct to
22 determine the organic resins in the toners on
23 pages 1 and 2 matched?

24 A. Organic resins?

25 I did not do any tests on the organic

1 L. Stewart

2 resins, I did the tests on the extractible
3 components.

4 Q. So when you say the toners matched,
5 what you actually mean is that they matched at
6 the level of analysis of TLC; right?

7 A. Right. I followed the protocol of the
8 federal agency and I stopped at the point of a
9 match.

10 Q. But there are other tests that you did
11 not perform; correct?

12 A. Of course.

13 Q. And it's possible that these other
14 tests could find differences in other components
15 of the toner; right?

16 A. Right. That's why I kept some sample
17 behind. It may be we go to Hewlett-Packard
18 directly and have them identify it.

19 Q. And if there are differences in the
20 organic resins or other components then the
21 toners could be said to not match; right?

22 A. Not if it matches, but yes.

23 Q. But if it doesn't match, then it
24 wouldn't match?

25 A. Of course.

1 L. Stewart

2 Q. And you say the toner from this
3 document is consistent with toner from an HP
4 1100/3200 series machine; right?

5 A. Correct.

6 Q. Consistent with does not exclude the
7 possibility that it's also consistent with other
8 printers; right?

9 A. I found none, but there is the
10 possibility of that, yes.

11 Q. Well, consistent with doesn't strike me
12 as a very strong conclusion.

13 Do you mean it to be a strong
14 conclusion?

15 A. No. We are directed by standards on
16 what consistent with means and doesn't mean. I
17 agree with you it's not a very strong conclusion
18 because there is a possibility that there's some
19 other printer out there we are not aware of.

20 Q. And how did you do your comparison?

21 A. A number of years back I developed a
22 library of standards for toners and printers and
23 I had those filed in my collection along with the
24 analysis results.

25 Q. Let me stop you there for one second.

1 L. Stewart

2 I'm going to get to the library.

3 What I'm asking you is how did you do
4 the comparison. We are going to get to the
5 library.

6 What was the comparison?

7 A. You run the questioned sample and you
8 compare it against the non sample.

9 Q. What specifically do you compare?

10 A. The separation on a thin-layer
11 chromatography plate along with any associated
12 fluorescence characteristics.

13 Q. Now let's look on paragraph 97 of your
14 report where you say that you compared it against
15 your library of standards.

16 Do you provide a chart or illustration
17 demonstrating this comparison?

18 A. I can in court. I don't have a chart
19 with me today.

20 Q. But your expert report did not include
21 a chart of this comparison; is that right?

22 A. No, it does not have a chart in my
23 report showing a layperson a thin-layer
24 chromatography separation, no, I did not do that.

25 Q. You do actually cite something, though,

1 L. Stewart

2 at the end of 97, right, Exhibit 6; right?

3 A. I'm citing information from, I believe,
4 Hewlett-Packard there.

5 I'm sorry, that citation is the
6 section, I believe, of the Secret Service
7 operating procedures for the questioned documents
8 branch, if I am not mistaken.

9 Q. So that does not actually provide a
10 specific illustration of your comparison; right?

11 A. No, I did not -- I purposely did not
12 put an illustration of my comparison in there.

13 Q. Now, you didn't identify a specific
14 cartridge in your report; right?

15 A. No. That would not be possible.

16 Q. You identified two printer series;
17 right?

18 A. It's two series that use the same
19 cartridge or same toner.

20 Q. And what cartridge is that?

21 A. I believe it's a 92A.

22 Q. Now, you don't include in your report
23 the fact that a 92A cartridge used in those
24 printer series is still commercially available
25 today, do you?

1 L. Stewart

2 A. No, I do not include that.

3 Q. Are you aware of the fact that the 92A
4 cartridge is still commercially available today?

5 A. Yes.

6 Q. I could print a document today using
7 that cartridge, couldn't I?

8 A. Yes, if you had one of those printers
9 and you had that cartridge, you could.

10 Q. In fact, the 92A cartridge works in
11 lots of different printers, not just those
12 printer series; right?

13 A. I believe I listed all of them. I can
14 find that if you direct me --

15 Q. You're not providing an opinion that
16 the 92A cartridge works only in those two
17 machines, are you?

18 A. No. I do not recall if my list had
19 other machines, but I did not -- I can find that,
20 as I said, if you would like to discuss it.

21 Q. So, but you agree with me that I could
22 go today to the Staples down the street, assuming
23 they have this, and get a 92A cartridge and then
24 print a document with it; right?

25 A. You'd probably would have to do that

1 L. Stewart

2 online, but yes, you can do that.

3 Q. So today someone could purchase that
4 toner and use it to print a fraudulent document;
5 correct?

6 A. Yes. I believe I included the printout
7 from Amazon that lists it as being available
8 today.

9 Q. Now, you also counter Professor
10 Romano's conclusion the two pages were printed on
11 two different printers; right?

12 A. Yes and no. I countered his conclusion
13 based on his results he cannot say that.

14 Q. I see.

15 But as you said, I think, earlier, you
16 are not an expert in typeface, typography or
17 printing technology; right?

18 A. I disagree. I taught that at Rochester
19 Institute of Technology and I have been trained
20 in that by the Secret Service, so I disagree with
21 you.

22 Q. Have you ever been qualified by a court
23 as an expert in typeface, typography and printing
24 technology?

25 A. Quite often. The first time was in the

1 L. Stewart

2 Unibomber case when I worked on that, involved
3 typeface and typography.

4 Q. And what were you qualified as an
5 expert in that case?

6 A. I performed analysis in that case on an
7 unexploded bomb, the label from an unexploded
8 bomb, and I identified it to a make and model of
9 the printer using the same technology I used in
10 this case and then I also performed software
11 analysis on the font to identify the font package
12 that eventually was found in his shed when they
13 arrested him.

14 Q. Did you testify in that case?

15 A. No. It never went to trial.

16 Q. And you are not specifically refuting
17 Professor Romano's conclusion, you're simply
18 saying you need more information before you can
19 assess his opinion; right?

20 A. No, I didn't ask for more information.
21 I said that he was unqualified to make an opinion
22 on forgery because he's not a qualified forensic
23 document examiner and based on his findings that
24 the two pages are different and why he says
25 they're different based on scaling and things

1 L. Stewart

2 like that he can't draw that conclusion because
3 there are software packages that were available
4 back then in 2003 that would have done that, so I
5 disagree with his opinion.

6 Q. And what software packages are those?

7 A. I had them in my office, a list of the
8 dates on them. I believe that date --

9 Q. Did you spell them out in your report?

10 A. No. I believe at that time Word
11 Perfect offered it as well as some of the
12 printers, I believe the Laserjet 3 may have
13 offered it as well, which was a Hewlett-Packard.

14 If I am not mistaken, at that time it
15 was Word Perfect 3.1.

16 Q. And you don't specify any of that in
17 your report, though, do you?

18 A. No, I was not asked that in the report.
19 You are asking me that now.

20 Q. You provide an opinion that attempts to
21 refute Professor Romano because you say he's not
22 qualified and you provide an alternative opinion;
23 right?

24 A. Yes.

25 Q. But you didn't provide the basis for

1 L. Stewart

2 that opinion in your report?

3 A. Oh, I believe I did. I didn't include
4 every little reason. You're asking me for a
5 specific reason and about a specific subject and
6 I am trying to answer your question.

7 Q. But you agree with me that you didn't
8 include any detail on any software packages in
9 your report; right?

10 A. No, but I can. If this goes to trial,
11 I will certainly have it there.

12 Q. Good.

13 Now, Mr. LaPorte also concluded in his
14 report that the paper used for pages 1 and 2 of
15 the Work For Hire document is different; right?

16 A. Yes, he did.

17 Q. And he laid out the basis for that
18 conclusion; correct?

19 A. Yes.

20 Q. And the bases are that the paper on
21 page 2 is significantly more tensile than page 1,
22 right, that's one of them?

23 A. I don't have it in front of me, so I
24 don't know.

25 Q. Does that sound right?

1 L. Stewart

2 A. That sounds correct.

3 Q. And did he also provide a basis that
4 the difference in thickness between pages 1 and 2
5 is statistically significant; right?

6 A. If he said statistically significant,
7 he is mistaken, but I think he did address that
8 as well.

9 Q. We are going to get to statistics.
10 He also said that the opacity was
11 different between pages 1 and 2; yes?

12 A. I believe so.

13 Q. And that the UV characteristics on page
14 1 and 2 are different when viewed with shortwave
15 and medium wave light, he also said that; yes?

16 A. I don't recall him saying that, I'm not
17 sure.

18 Q. Do you recall that he also said the
19 chemical tests using GCMS revealed the two pieces
20 of paper have different chemical compositions;
21 right?

22 A. No, I don't recall that either.

23 Q. Now, in terms of your report, you do
24 not state an opinion that the pages of the Work
25 For Hire document are of the same stiffness or

1 L. Stewart

2 tensility; correct?

3 A. No, I do not reach that opinion.

4 Q. You did not assess the stiffness of the
5 pages; right?

6 A. No, and there's a reason for that.

7 Q. Okay.

8 And you did not state an opinion
9 stating that the opacity of the Work For Hire
10 pages is the same; right?

11 A. The opacity of a damaged document, no,
12 I did not address that.

13 Q. You didn't assess the opacity of the
14 pages; right?

15 A. No. It would have been ridiculous to
16 do that.

17 Q. Okay.

18 And you did not state an opinion that
19 the pages appear the same when viewed with
20 shortwave or medium wave UV light; right?

21 A. Not since the documents were damaged,
22 no.

23 Q. Now, your overall conclusion regarding
24 the paper seems to be that defendants' experts
25 claim of different papers is wrong.

1 L. Stewart

2 Is that your conclusion?

3 A. Based on my work and that of
4 Mr. Rantanen, yes.

5 Q. And you don't clearly state that the
6 papers are definitively the same; right?

7 Are you concluding that they are the
8 same?

9 A. He did.

10 Q. What do you say?

11 A. I say we need to send it to an expert
12 like Mr. Rantanen and that's what I did.

13 Q. So you are relying on his opinion, you
14 are not providing a particular opinion about
15 that; is that right?

16 A. My opinion was based on the erroneous
17 measurements that were conducted on the damaged
18 document.

19 As far as a chemical analysis and a
20 fiber analysis, I sent that to one of the most
21 world-renowned experts that we have.

22 Q. And what is your opinion based on
23 Mr. Rantanen's testing results?

24 A. My opinion is not based on his test
25 results. His opinion, if you want me to read it

1 L. Stewart

2 to you, I can go to his report.

3 Q. Well, what do you believe his opinion
4 to be with respect to whether the pages are the
5 same?

6 A. I believe he decided that they were not
7 only the same fiber composition, but they were
8 consistent with coming from the same production
9 run, which would be inconsistent with the
10 defendants' theory that the documents were from
11 many years apart.

12 Q. And do you have a particular opinion as
13 well or are you simply relying, as to that issue,
14 you are simply relying on his opinion?

15 A. No. My opinion is that you can't do a
16 chemical or an accurate physical test on damaged
17 documents and that you certainly can't measure
18 them to a 10,000ths of an inch and then say that
19 they are slightly different and that that imparts
20 a difference, that was totally erroneous, and
21 that is something that I do refer to.

22 Q. Yes, I understand that, and we are
23 going to get to that, but with respect to
24 Rantanen's results you are relying -- the basis
25 for your statements, your opinion about the

1 L. Stewart

2 papers being the same is Rantanen's results and
3 the statistics interpretation; yes?

4 A. No. I don't think I have an opinion in
5 there showing that I believe the papers are the
6 same.

7 Q. Okay.

8 A. I discussed problems with the
9 procedures that were used by your team and then I
10 included a reference in there that I quoted
11 Mr. Rantanen and what his results were.

12 Q. I see.

13 And you criticized Mr. LaPorte's use of
14 a handheld micrometer; right?

15 A. No. I criticized his finding.

16 Q. You are aware, are you not, that your
17 partner Mr. Blanco used a handheld micrometer to
18 take measurements of the document; right?

19 A. That's correct.

20 Q. And you challenged that the
21 measurements that Mr. LaPorte took actually
22 constitutes a statistically significant
23 difference; right?

24 A. I don't know if that's the words I
25 would use, but I would stand by that.

1 L. Stewart

2 Q. And what exactly is your statistics
3 background?

4 A. I have taken a number of courses in it
5 in college, I've --

6 Q. What courses specifically?

7 A. Statistics 101, 201, et cetera.

8 Q. How many? You said a number.

9 A. I believe I took it for three years of
10 the four-year degree, my lower degree.

11 Since then I've used it from time to
12 time when I've been working on research that
13 needed to be published.

14 Q. And what is a standard deviation
15 measure?

16 A. Well, you take the mean, the average,
17 and then you can do standard deviation based on
18 different amounts of reliability, whether you
19 want it to be very reliable or not so reliable.

20 Q. Can you explain the difference between
21 the standard deviation and the variance?

22 A. Not without referring to my books.

23 Q. Turn your attention to paragraph 303 of
24 your report.

25 There you state, quote, "Furthermore,

1 L. Stewart

2 for LaPorte to report a difference in the paper
3 used to create pages by measuring the two pages
4 as 0.0042 plus or minus 0.00005 inches" -- dot,
5 dot, dot -- "is equally ludicrous since the two
6 measurements can be equal based on his own report
7 of variance."

8 A. Yes.

9 Q. Right.

10 And then you proceed to show this by
11 adding 0.00005 to 0.0042 and subtracting that
12 from 0.0043; right?

13 A. Which makes them the same number.

14 Q. Did you see the footnote in
15 Mr. LaPorte's report on page 11, footnote 19?

16 A. Not that I recall.

17 Q. Do you recall the footnote that says
18 that he used students' T-tests to calculate the
19 statistical significance of his results?

20 A. No. I don't dispute that he did that.

21 Q. Do you know what a T-test is?

22 A. It's a reliability test you can do with
23 statistics to see if it falls within a certain
24 range that we talked about.

25 Q. Test whether the test statistic follows

1 L. Stewart

2 normal distribution if a null hypothesis is
3 supported?

4 A. It has to do with the bell-shaped curve
5 and whether it follows that, yes.

6 Q. Do you understand the difference
7 between a T-test confidence interval and a
8 Bayesian credible interval?

9 A. Not without going back to my books, I
10 don't.

11 Q. A T-test measures the probability that
12 a difference between the two independent data
13 points is not statistically significant; is that
14 right?

15 MR. BOLAND: Objection.

16 A. I would have to look at my books before
17 I would quote something like that. I don't know.

18 Q. Are you aware that a Bayesian statistic
19 determines the uncertainty distribution of a
20 parameter?

21 A. No. What I'm reporting here is simple
22 mathematics. His report doesn't make sense.

23 Q. Let's take a look at what you say.

24 Do you recognize that your
25 interpretation of Mr. LaPorte's opinion describes

1 L. Stewart

2 a Bayesian credible interval when in fact
3 Mr. LaPorte provides a T-test confidence interval?

4 A. No, I did not report any of that. I am
5 simply using his numbers, his math, and the fact
6 that he used a very easily changeable device
7 where one thousandth of an inch means nothing.

8 Q. Let's look at your analysis of the
9 statistical measurements because you point to
10 that as, you know, a claimed error.

11 What's the standard deviation found by
12 Mr. LaPorte in the measurement in mean thickness
13 on page 1?

14 A. What are you referring to, what page?

15 Q. Well, I'm referring to your report here
16 on page 62, paragraphs 302 and 303.

17 A. All right.

18 Please repeat your question.

19 Q. Hold on one second.

20 I show you page 11 of Mr. LaPorte's
21 report. If you look up at the top you see in the
22 first paragraph it describes the measurements and
23 that the average of the measurements is .0042 and
24 the standard deviation is .00005.

25 Is that accurate as what he describes

1 L. Stewart

2 as the average measurement and the standard
3 deviation?

4 A. In one case. In the other --

5 Q. It's .0043, that's the average, but the
6 standard deviation he finds in both is .00005;
7 right?

8 A. Which is 1/100th of a thousandth of an
9 inch, which is well beyond the capability he
10 quoted.

11 Q. You have to take the square of the
12 deviation to get the variance; right?

13 A. I don't know. I'd have to look at my
14 books.

15 Q. So you don't recall the a variance is
16 simply the square of the standard deviation?

17 MR. BOLAND: Objection.

18 A. No. I'm using simple mathematics here,
19 not statistics. I'm looking at his numbers and
20 saying they don't follow, his numbers don't
21 follow the capability of the equipment and his
22 numbers don't follow even amongst themselves.

23 Q. Right.

24 And you're reporting to -- you're
25 pointing to the number, you are saying that

1 L. Stewart

2 Mr. LaPorte's reported variance is .00005 when in
3 fact that's what Mr. LaPorte reports is the
4 standard deviation; correct?

5 A. What I'm showing is that he is
6 measuring the two pages as .0042 plus or
7 minus .00005 inches and then the same with .0043
8 plus or minus.

9 Q. Right.

10 And the plus or minus he reports is the
11 standard deviation; right?

12 A. That's what he's reporting as the
13 standard deviation, which is inaccurate if you
14 are using a machine that goes to ten thousandths,
15 you can't use a hundred thousand.

16 Q. And in 303 you use that number .00005
17 as the variance, but in point of fact the
18 variance and standard deviation are two very
19 different terms in statistics; right?

20 A. I think you are using variance as a
21 statistical term and I am using it as a simple
22 term that he is showing that there is a variance
23 between the figures. I'm not using it
24 statistically.

25 Q. You're not using it statistically.

1 L. Stewart

2 You're criticizing his statistics, but you're
3 not using the term variance in a statistical way?

4 A. I don't criticize his statistics
5 anywhere. I'm simply saying that his numbers
6 don't work and they certainly can't be used with
7 a machine that only or an instrument that only
8 goes to ten thousandths of an inch.

9 MR. SOUTHWELL: Let's take a quick
10 break. We are almost done.

11 THE VIDEOGRAPHER: Off the record. The
12 time is 5:46. This ends tape number 5.

13 (Recess taken.)

14 THE VIDEOGRAPHER: We are back on the
15 record. The time is 5:56. This is tape 6.

16 BY MR. SOUTHWELL:

17 Q. Did you discuss the case or the
18 deposition over the break with Mr. Boland at all?

19 A. No.

20 Q. Now, in paragraph 305 of your report --

21 A. I did talk to him about scheduling
22 problems, but I did not talk about the
23 deposition, as far as what we've been discussing.

24 Q. Okay.

25 At paragraph 305 of your report you

1 L. Stewart

2 write that LaPorte, Lesnevich, Romano, and Tytell
3 each concluded that page 1 of the two-page
4 Facebook contract was substituted at a later
5 date; is that right?

6 A. Yes.

7 Q. And you have referred to this in your
8 report as the, quote, page 1 substitution theory;
9 right?

10 A. I don't know if I refer to it that way,
11 but that's fine, if you want to refer to it that
12 way.

13 Q. Well, okay.

14 In paragraph 165 you describe it, you
15 don't describe it quite like that, but that's
16 essentially what you're referring to it as, and
17 that theory that you are advancing suggests that
18 a recently fabricated page 1 was substituted for
19 the genuine page 1 created in 2003 and appended
20 to the genuine page 2 created in 2003. That
21 would be the general nature of that type of a
22 theory; yes?

23 A. Yes, that's defendants' theory.

24 Q. Right.

25 Well, you're advancing that as

1 L. Stewart

2 defendants' theory; right?

3 Can you cite to me where defendants'
4 experts actually advance that theory?

5 A. If we can stop and look for it, it's in
6 each of their reports where they concluded that
7 page 1 was substituted at a later date.

8 Q. Really? In each of their reports they
9 concluded that page 1 was substituted at a later
10 date?

11 Okay. That's your opinion; yes?

12 A. I believe that's accurate, yes.

13 Q. Great. Okay. We can move on, then.

14 Now, you advance that Mr. Rantanen's
15 paper composition analysis shows why this
16 conclusion is wrong, and that's at paragraphs 305
17 to 308; right?

18 A. I'm saying that it's wrong why?

19 Q. Because Mr. Rantanen's composition
20 analysis demonstrates that the two pages in your
21 view are the same; yes?

22 A. That's not why I'm saying Mr. LaPorte's
23 math is wrong and his use of equipment is wrong;
24 it's two independent things.

25 Q. I'm not asking you any questions about

1 L. Stewart

2 Mr. LaPorte's math or his equipment.

3 A. You pointed to that paragraph 303.

4 Q. Okay. I was referring to paragraph
5 305.

6 Maybe I misspoke. I am referring to
7 paragraph 305 where you are talking about the
8 paper composition analysis, and you state in your
9 report -- and this is actually paragraph 304 --
10 that that paper composition analysis shows
11 defendants are wrong; right?

12 A. No. My 304 is a title "Paper
13 Composition Analysis Shows Defendants Are Wrong."
14 There's no finding there, that's a title of a
15 section.

16 Q. Isn't that your opinion?

17 That's a title of a section of your
18 report.

19 That's not your opinion?

20 A. I'm trying to answer your question
21 based on what you called it. It is a title. I
22 then go from that and describe the reason behind
23 that observation.

24 Q. Did you write that title?

25 A. Yes.

1 L. Stewart

2 Q. So these are your words, "Paper
3 Composition Analysis Show Defendants Are Wrong"?

4 A. Yes. I stand by the words.

5 Q. Okay.

6 But it's not your opinion or it is your
7 opinion?

8 A. You could call it an opinion if you
9 want.

10 Q. I'm just asking what your expert
11 opinion is that you provided to the Court.

12 It certainly appears to say paper
13 composition analysis shows defendants are wrong.

14 A. Well, I wouldn't call that an expert
15 opinion, I would call that a statement and then
16 what follows are paragraphs defining the opinion.

17 Q. Okay.

18 Well, I think you just agreed with me
19 that it's opinion, but that's fine.

20 Now, Mr. Rantanen supposedly
21 contradicts defendants' expert's purported
22 conclusion --

23 MR. SOUTHWELL: Strike that.

24 Q. The only relevance Mr. Rantanen's paper
25 composition analysis has is that it supposedly

1 L. Stewart

2 contradicts defendants' expert's purported
3 conclusion that page 1 was substituted at a later
4 date; correct?

5 A. No.

6 Q. Its relevance is, in your view, that it
7 establishes that the two pages were from the same
8 mill and production run; right?

9 A. That's one thing. It also establishes
10 that they have consistent reactions for starch
11 and pH. It also allowed us to figure out where
12 an additional contamination on the document came
13 from, which are black particles that are found on
14 the front of the page.

15 Q. Now, you didn't actually perform the
16 testing there, that was Mr. Rantanen; right?

17 A. I took the samples and he performed
18 that test.

19 Q. And what specific samples did you take?

20 A. I produced this to you. I sent him
21 plugs that were taken from page 1 of the Work For
22 Hire document out of my -- it was my vial number
23 7 and I sent him plugs from page 2 of the
24 document, which was my vial number 9, I sent
25 those to him on October 30, 2011.

1 L. Stewart

2 Q. And how do you know that -- what are
3 you referring to when you're giving this
4 information?

5 A. The TLC worksheet -- not that, that's
6 an analysis worksheet. There's another one that
7 you have that has --

8 Q. Can you hold it up so we can see it?

9 A. That is the top of the page. You have
10 to go down from that to get the rest.

11 I sent photographs that were broken, so
12 you probably have two or three to make up the
13 document.

14 This is the document, it's different
15 than the document you've got right there.

16 Q. Right. I understand.

17 So these are the documents that we have
18 that you provided us, it appears this is one
19 page, it's just the top line of the TLC worksheet
20 form that includes -- I suppose this is vial 1.

21 MR. SOUTHWELL: Why don't we mark this
22 as the next exhibit, please.

23 (Defendants' Exhibit 25, one-page
24 photograph of document, marked for
25 identification, as of this date.)

1 L. Stewart

2 Q. Showing you Defendants' Exhibit 25,
3 that's, you're saying, one page of this, and you
4 are saying that page continues.

5 Why is it you took photographs of these
6 pages rather than simply making a Xerox copy?

7 A. Trying to give you the best quality, I
8 took high-res digital photographs as opposed to a
9 400-dot-per-inch photocopy.

10 Q. Okay.

11 I don't believe we have the rest of
12 those pictures or the rest of that sheet, so we
13 would ask that you provide that to us.

14 May I take a quick look at it?

15 A. Certainly.

16 Q. And that sheet explains what's in vials
17 7 and 9 and where those come from; yes?

18 A. In part.

19 Q. Does this explain where the plugs come
20 from?

21 A. The -- no. The video shows where they
22 came from and there's photocopies of the document
23 before and after I took my plugs. There isn't
24 anything that shows specifically where an
25 individual plug came from, just them in toto.

1 L. Stewart

2 Q. How many paper blanks did you take?

3 A. For that particular document?

4 Q. How many paper blanks did you take of
5 the Work For Hire contract document?

6 A. Looks like 16 from page 1 and then 16
7 from page 2 and then an additional 20 from page 1
8 and an additional 20 from page 2.

9 Q. And what vials were those paper blanks
10 in?

11 A. That would be vial 1, vial 2, vial 7
12 and vial 9.

13 Q. Those were all paper blanks in those
14 vials?

15 A. They were paper-only samples.

16 Q. And of those samples you gave the
17 entirety of vials 7 and 9 to Mr. Rantanen?

18 A. I believe so.

19 Let me check.

20 Q. Sir, if you don't mind, if you'd leave
21 that out, I could just have a quick copy made of
22 that.

23 A. Okay. I just want to make sure I get
24 it back in the right place.

25 Q. Is that just that one page?

1 L. Stewart

2 A. That's all you've asked for.

3 Q. Well, is there anything else that you
4 haven't produced provided to us?

5 A. I provided that to you. You say you
6 didn't have it, but I did provide it to you.

7 Q. Okay.

8 Is there anything else that you have
9 that you haven't provided to us?

10 A. I provided you everything. I don't
11 know whether you have everything.

12 Q. And what did you do with the rest of
13 the paper blanks?

14 A. I have them.

15 Q. Did you do anything with them?

16 A. I used some for the toner analysis and
17 I have the rest in my laboratory.

18 Q. How did you use them for the toner
19 analysis?

20 A. As a paper blank to subtract any
21 influence from the paper from the results of the
22 toner.

23 Q. You ran those before you ran the TLC of
24 the toner, the TLC analysis on the toner?

25 A. No. You run them at the same time.

1 L. Stewart

2 Q. Now, you provide -- you completed a
3 test services request form for Mr. Rantanen;
4 right?

5 A. Yes.

6 Q. And you asked him to determine
7 consistency of composition with paper in vials 7
8 and 9; right?

9 A. If you want to show me the document, it
10 would be quicker or -- so do you want me to read
11 from that or do you want to read from it?

12 Q. Sure.

13 So the test requested reads determine
14 consistency -- sorry, hold on -- determine
15 consistency of composition with paper in vials 7
16 and 9 and also determine if paper composition is
17 one that would be affected by exposure to intense
18 ultraviolet light as one side of these paper
19 samples are yellowed and we are trying to
20 determine why.

21 Is that accurate as to what you asked
22 Mr. Rantanen to do?

23 A. Yes.

24 Q. You didn't ask him to perform any other
25 tests; correct?

1 L. Stewart

2 A. Later on I asked him to identify the
3 black particles that he had observed.

4 Q. Okay.

5 And with respect to your second request
6 you concluded in your report that the yellow
7 discoloration damage evident in the Facebook
8 contract is, in my opinion, the result of
9 repeated exposure of the document to high
10 intensity or UV light, and in response to that
11 Mr. Rantanen made conclusions about the UV
12 exposure concluding that the paper samples did
13 not have any detectable mechanical high pulp
14 fibers which would be affected by photo
15 degradation from UV light; is that right?

16 A. No, not entirely.

17 Q. Isn't that what he concluded?

18 A. No. I assume you'll find out when you
19 depose him if it's not in his report, but it's --
20 he requested to be able to analyze the document
21 in person, he said that there wasn't enough in
22 the very small circles that he was provided by me
23 to properly address what caused the UV
24 fluorescence or UV change in the document on one
25 side only, so he asked to be able to look at the

1 L. Stewart

2 document.

3 Q. I see.

4 So he could not conclude one way or the
5 other whether the paper samples were affected by
6 contact with UV light?

7 A. At this point, no, he could not
8 conclude it.

9 Q. Right.

10 And with respect to the first
11 request --

12 MR. SOUTHWELL: Sorry. Strike that.

13 Q. Right.

14 So he determined that the fiber
15 contents of the two samples is consistent with
16 coming from the same mill and production run;
17 correct?

18 A. I believe that's what he --

19 Q. And that does not mean the paper
20 samples actually came from the same paper mill
21 and production run; right?

22 A. No.

23 Q. It means only that he could not
24 differentiate the paper samples at the level of
25 analysis he performed; right?

1 L. Stewart

2 A. That seems accurate, yes.

3 Q. And based on that conclusion one
4 couldn't conclude that the paper samples were
5 actually produced during the same production run;
6 right?

7 A. Based on a consistent -- the word
8 "consistent," no, you cannot conclude that.

9 Q. Right.

10 So it would be inappropriate to
11 conclude that the paper samples were produced on
12 the same day; right?

13 A. I don't want to put words into
14 Mr. Rantanen's mouth, but based on my use of the
15 word "consistent" you would not be able to say
16 that they were done on the same day, no.

17 Q. And assuming that -- well, a conclusion
18 that the paper came from the same mill and
19 production run would be completely consistent
20 with Mr. Ceglia having created a fraudulent
21 contract and printed it on paper from the same
22 production run; correct?

23 A. I assume so, yes.

24 Q. And such a conclusion would be
25 consistent with Mr. Ceglia having created

1 L. Stewart

2 multiple versions of the fraudulent document and
3 printed them on paper from the same production
4 run; right?

5 A. Yes.

6 Q. And you noted also with respect to the
7 paper that it is bond type paper.

8 What do you mean by bond type paper?

9 A. As opposed to hundred percent wood
10 paper that would be found in poor quality Xerox
11 paper.

12 Q. I am handing you back your TLC
13 worksheet form which we have now made a copy of.

14 What are the characteristics of bond
15 paper?

16 A. Typically it would involve some type of
17 rag content, cotton fiber, linen, that type of
18 thing, to make it have a softer feel.

19 Q. You state in your report that you
20 observed the white fluorescing tab marks on the
21 front of pages 1 and 2 of the Work For Hire
22 document; right?

23 A. That's correct.

24 Q. Did you document those tab areas?

25 A. Yes, I did.

1 L. Stewart

2 Q. How?

3 A. In my notes that were taken at the desk
4 as I was doing the examination.

5 Q. Did you measure them?

6 A. Yes, I did.

7 Q. What were the measurements?

8 A. Reading from my notes it says there
9 were two slightly wider areas on both pages on
10 top edges about 1/2 inch in from left on page 1
11 and one inch from right on page 1.

12 They are -- and this is not in my
13 notes, but just my recollection, they are
14 amorphous in size so that you cannot do an
15 accurate measurement of exactly how big they
16 were.

17 Q. And what are you -- you're reading from
18 your notes in the case.

19 Can you just hold those up, please?

20 A. Yes. It was provided to you, it's got
21 Staples at the top from a Staples --

22 Q. And how many pages?

23 A. Just one page.

24 Q. And how do you know it was provided to
25 us? Did you provide it to us?

1 L. Stewart

2 A. Yes.

3 Q. You did?

4 A. Yes.

5 Q. How?

6 A. It's my recollection it was provided to
7 you back in November and it was provided to you
8 again on Mr. Southwell's request last week when
9 you got that file.

10 Q. And you provided it to us directly?

11 A. No. I don't deal with you directly. I
12 provided it to the lawyers on Mr. Ceglia's side
13 and they provided it to you.

14 Q. How do you know they provided it to us?

15 A. You are showing me some of them, so I
16 assume that they did.

17 Q. Do you want to look through here,
18 because those notes are not in here, those notes
19 were not provided to us.

20 A. If you want me to look through there, I
21 will.

22 Q. Can I make a copy of those notes?

23 Let's look at the TLC worksheet form
24 that you just provided to us today and which we
25 have made a copy of.

1 L. Stewart

2 MR. SOUTHWELL: Why don't we mark this
3 as Defendants' Exhibit 26, please.

4 (Defendants' Exhibit 26, one-page
5 document headed "TLC Worksheet Form," marked
6 for identification, as of this date.)

7 Q. That's the form you just gave to us,
8 right?

9 It notes Q1 and Q2.

10 What is Q1?

11 A. That was what I called the Work For
12 Hire document.

13 Q. Right.

14 And that's in your report, you call Q1
15 the Work For Hire document and you call Q2 the
16 specs document, the specifications document;
17 right?

18 A. I don't know. I have to look at my
19 notes back here. You just took my notes, so --

20 Q. Well, why don't I refer you to your
21 report on page 12.

22 A. You are referring to a report that was
23 done afterwards. I need to look at the original
24 notes when I first made these notations and
25 that's what you just took.

1 L. Stewart

2 Q. Okay. All right. We will come back to
3 that, then.

4 Now, with respect to your opinions
5 regarding the staple holes in the Work For Hire
6 document, your expert opinion with respect to
7 those staple holes is that the Facebook contract
8 was only stapled one time; right?

9 A. That's Mr. Blanco's opinion and I agree
10 with him.

11 Q. Well, in paragraph 181 -- would you
12 refer to paragraph 181 of your report.

13 A. All right.

14 Q. There's no mention of Mr. Blanco's
15 opinion there.

16 This is your opinion, is it not?

17 A. Right.

18 As I mentioned, I looked at the same
19 evidence, I agree with that finding, and then he
20 did additional work on it.

21 Q. So your opinion here is that the
22 Facebook contract was only stapled one time?

23 A. Yes.

24 Q. And you state that the basis of your
25 conclusion is a combination of examining the

1 L. Stewart

2 resultant holes from the previously stapled
3 Facebook contract along with the detent markings
4 found on the back or reverse side of each page;
5 right?

6 A. Right.

7 Q. Now, you didn't examine the Work For
8 Hire document in its original state or the staple
9 holes with a microscope; correct?

10 A. I believe I had a handheld microscope
11 at the site. I don't recall.

12 Q. When you describe a handheld
13 microscope, are you referring to a magnifying
14 glass?

15 A. No. I believe I brought a digital
16 microscope.

17 Q. Is that the only microscope device that
18 you used in your examination of the original
19 document?

20 A. I don't recall. I also had a
21 handheld -- I also had -- I think I may have had
22 two handhelds.

23 I don't recall exactly what I used
24 there, I would have to look at the videotape.

25 Q. Did you take any photographs of the

1 L. Stewart

2 staple holes?

3 A. I took scans on site, I did not take
4 any photographs.

5 Q. And you understand that someone who
6 is -- that it is possible to --

7 MR. SOUTHWELL: Strike that.

8 Q. Let me actually hand you back your
9 notes here and if we could have this marked as
10 Defendants' Exhibit 27.

11 (Defendants' Exhibit 27, photocopy of
12 one page of handwritten notes by Mr.
13 Stewart, marked for identification, as of
14 this date.)

15 Q. Defendants' Exhibit 27 is the notes we
16 were just referring to?

17 A. Yes, sir.

18 Q. Yes?

19 So if you refer to that, can you
20 identify what Q1 and Q2 on Defendants' Exhibit 26
21 is?

22 A. I will try.

23 There I'm calling Q2 the six-page
24 document. I believe what is going on there, if
25 you look at the worksheet, you'll see that

1 L. Stewart

2 there's two pages listed for Q1, two pages listed
3 for Q2, and I just doubled my sampling because at
4 the time of the analysis we were asked -- we were
5 allowed to do additional plugs and so I'm using
6 the same name twice, it appears.

7 Q. Well, let's discuss this.

8 So Defendants' 27 are your notes from
9 the date of the inspection July 25th, 2011;
10 correct?

11 A. That's correct.

12 Q. Those are your contemporaneous notes of
13 what you did; yes?

14 A. That's correct.

15 Q. And Q1 is the two-page document that
16 we've been referring to as the Work For Hire
17 document; yes?

18 A. The six-page document, yes.

19 Q. Q1 is the two-page document that we
20 referred to as the Work For Hire document on your
21 notes, Defendants' Exhibit 27?

22 A. I'm sorry. Yes, Q1 is the Work For
23 Hire document.

24 Q. Q2 is the six-page document titled
25 "StreetFax Back-End" dot, dot, dot, that we

1 L. Stewart

2 referred to as the specifications document; yes?

3 A. That's correct.

4 Q. And if you look in your report at
5 paragraph -- page 12, you refer to, again, Q1 is
6 the Work For Hire contract, Q2 is the Street Fax
7 back-end technical specification; yes?

8 A. That's correct.

9 Q. Now, the TLC form that we were
10 referring to as Defendants' Exhibit 26 is also a
11 contemporaneously dated document from July 25,
12 2011, when you conducted this examination;
13 correct?

14 A. That's correct.

15 Q. And there vials 1 through 6 reflect
16 your document here, your log reflects that those
17 samples were taken from Q1 and your log reflects
18 that vials 7 through 10 were taken from Q2;
19 correct?

20 A. That's what that says, yes, and I'm
21 trying to explain that to you. If you look at
22 the videotape, you'll see where the analysis was
23 taken from. I was given the authority to take
24 additional plugs and I renamed it. I
25 unfortunately used the same name there that I

1 L. Stewart

2 then used in the report, but you could see that
3 those are both two-page documents and it's just
4 reiteration of the same analysis.

5 Q. So your testimony is that this
6 inventory is inaccurate with respect to -- well,
7 your inventory uses a different nomenclature than
8 your contemporaneous notes of the same day,
9 that's what you're testifying to?

10 A. That's not my testimony. I would have
11 made it clearer to you reading it now if I'd used
12 an A or some other name that I didn't use in the
13 report, so, again, I could have probably
14 clarified it, but it's very clear from reading
15 the worksheet that it's a two-page document in
16 what I did there.

17 Q. And so you are absolutely certain that
18 vials 7 to 10 which are denominated Q2 are not
19 actually the specs document?

20 A. Right. You can see from the pieces of
21 plugs that it's yellow on one side; the specs
22 document was not.

23 Q. And if we go back and check the
24 videotape do you think that that's going to
25 support your opinion?

1 L. Stewart

2 A. For that worksheet, yes.

3 Q. All right. We will do that.

4 Now, you understand that it's
5 defendants' position that Paul Ceglia has
6 proffered at least two physical documents as the
7 Work For Hire documents over the course of the
8 lawsuit.

9 Do you understand that?

10 A. I assume so, yes.

11 Q. When you testified a few moments ago
12 that you were allowed to take additional plugs,
13 what are you referring to?

14 A. My recollection of the first time when
15 we were allowed to take plugs, there was quite a
16 bit of discussion about the number of plugs and
17 where they could be taken from and at some point
18 that was cleared up and so I took the maximum
19 number I was allowed and I photographed the
20 document before and after -- I'm sorry,
21 photocopied the document before and after.

22 Q. Do you recall that there was a protocol
23 document that was handwritten and initialed by
24 the parties that established exactly what plugs
25 they were producing?

1 L. Stewart

2 A. I recall that name being used. I don't
3 recall seeing the document, I was just told what
4 I could do.

5 Q. And you recall that in fact you were
6 allowed to take only 20 plugs from the Work For
7 Hire document?

8 A. I don't recall the number, I would have
9 to go back and look.

10 Q. But your testimony here is that you
11 were allowed to take additional plugs.

12 Are you sure that wasn't later when you
13 had access, exclusive access to the documents
14 that was not part of the authorized examination?

15 A. No. My analysis as far as taking plugs
16 was only done in Chicago.

17 Q. So did you send plugs from the
18 specifications document to Mr. Rantanen?

19 A. No. I sent him only the document, the
20 Work For Hire document.

21 Q. Now, it's your position that the
22 physical document that was used to create the
23 copy that was attached to the complaint of the
24 Work For Hire document is the same physical
25 document as the one produced to experts in this

1 L. Stewart

2 case; right?

3 A. You are going to have to repeat that.

4 Q. Let's turn to page 58 of your report.

5 MR. BOLAND: Alex, it's 6:26 p.m., so
6 we have been here 8-1/2 hours now, which is
7 more than reasonable to get the seven hours
8 of deposition time. I have moved my flight
9 twice and there's a car going to be waiting
10 for me downstairs, so time's running out.

11 MR. SOUTHWELL: I understand your
12 position. We'll be done when we're done.

13 Q. Let's look at the images that you
14 labeled here on page 58. You've got Q1, Q2, Q3,
15 Q4 -- let's actually go back to page 56.

16 Do you see the images here on 56?

17 Did you create all of these images and
18 the words around the images?

19 A. I created that from images that were
20 submitted by your experts, yes.

21 Q. And the words around the images, those
22 are yours?

23 A. Yes.

24 Q. And do you understand that
25 Mr. Lesnevich states his opinion to the highest

1 L. Stewart

2 degree of certainty that the handwriting is
3 different between Q1 and Q2 and Q3 and Q4? Do
4 you understand that?

5 A. That the handwriting is different?

6 Q. Yeah.

7 A. He's saying that there are differences
8 between the two.

9 Q. Right.

10 And you are in agreement with Jim
11 Blanco's report in this case that in fact these
12 are all the same, the handwriting is the same on
13 Q1, Q2, Q3, and Q4; right?

14 A. Okay.

15 There's only two questioned documents.

16 Are you referring to Lesnevich's image
17 where he's got Q1, Q2, Q3, and Q4?

18 Q. I'm referring to page 58 of your report.

19 A. And the question there is do I believe
20 Mr. Lesnevich or Mr. Blanco?

21 Q. Well, let's look at page 58. You've
22 got above the line and you've got below the line,
23 you have got Q1 and Q2 at the top and Q3 and Q4
24 at the bottom.

25 So is it your expert opinion that the

1 L. Stewart

2 handwriting represented here on your page 58 in
3 Q1 and Q2 matches the handwriting from Q3?

4 A. Using Lesnevich's images they do not
5 appear to match.

6 You're talking about a layperson or
7 after --

8 Q. My question is, is it your expert
9 opinion that the handwriting represented in Q1
10 and Q2 matches the handwriting in Q3, that's the
11 question.

12 A. Yes, it's my opinion that they are all
13 from the same document.

14 Q. So it's your expert opinion that there
15 are no differences between the M's represented in
16 these groups of images?

17 A. No. There are many differences to a
18 layperson and that's why you have to look at it
19 forensically.

20 Q. I see.

21 So there's differences that a layperson
22 might comment upon, but in your expert opinion
23 there's no difference, they are the same?

24 A. No. I say that there are differences,
25 but they are explained away if you know what

1 L. Stewart

2 you're talking about and you know what you're
3 looking at.

4 Q. I see.

5 And Mr. Lesnevich doesn't know what
6 he's talking about or what he's looking at; is
7 that your opinion?

8 A. I think Mr. Lesnevich made a mistake
9 here.

10 Q. I see.

11 Now, are there any other documents that
12 you have that you have not produced to us?

13 A. No. As I've mentioned before, I've
14 produced everything.

15 Q. And let's look at your TLC plates.

16 You ran the TLC plates on the toner?

17 A. Yes, sir.

18 MR. SOUTHWELL: Let me mark this as
19 Defendants' Exhibit 28.

20 (Defendants' Exhibit 28, one-page
21 photograph of TLC plate, marked for
22 identification, as of this date.)

23 Q. Take a look at Defendants' Exhibit 28.

24 Can you identify for us what those
25 lanes are?

1 L. Stewart

2 Do you have a document that identifies
3 what the lanes on this TLC plate Defendants'
4 Exhibit 28 is?

5 A. I'm looking.

6 Yes. It was provided to you, it has 10
7 lanes described on the left column.

8 Q. What are you referring to?

9 A. Another TLC worksheet that you were
10 provided in that package.

11 Q. Can you hold that up, please?

12 A. It says "Plate 1" in the upper left and
13 the upper right "Plugs taken from those removed
14 7/25."

15 Q. And how many sheets do you have here
16 that refer to the different plates?

17 You just have this one sheet that
18 refers to plate 1?

19 A. Yes, one plate and one sheet.

20 Q. You only did one plate and you have one
21 sheet that corresponds?

22 A. Right. The next page that you've got
23 is the back side of that sheet, the handwritten
24 notes beginning with I-706 in the top part.

25 Q. I don't think we have that.

1 L. Stewart

2 Could I make a copy of that?

3 It might be easier if you just give us
4 the whole file and then we can make sure we have
5 a copy of everything. It seems that there are a
6 number of documents that have not been provided.

7 A. If it helps you on those type of
8 documents, they were part of a PDF that was sent
9 with the file and there are many pages in the PDF.

10 Q. I am confident we printed everything
11 that we were provided. I think that for whatever
12 reason we were not provided those documents.

13 I will want to ask you some questions
14 about that, so you'll have to hold on.

15 Now, with respect to your library of
16 standards, do you have an index to your library
17 of toner standards?

18 A. I have a logbook that has all of them
19 in there.

20 Q. And have you been asked for that in
21 other litigations?

22 A. Yes.

23 Q. And have you provided that in discovery
24 in other litigations?

25 A. No, I have not.

1 L. Stewart

2 Q. Why not?

3 A. Because I don't feel it's fair to the
4 companies that I deal with, the agreements that I
5 made with them.

6 Q. What agreements are those?

7 A. To not disclose their information to
8 public sources.

9 Q. Is that a specific written agreement
10 with those companies?

11 A. No. It's an understanding that we've
12 had from very early days when I started the
13 library.

14 Q. When did you start the library?

15 A. Well, the library came from many
16 sources. When I was at the Bureau of Alcohol,
17 Tobacco and Firearms I was the person who got it
18 transferred from there to the Secret Service,
19 that was done was around 1983 or 1984, and I made
20 changes to the library, updated it and kept it
21 from that point forward until I left in 2005.

22 Q. I see.

23 And when you left in 2005 you took the
24 library that was the Secret Service's library of
25 standards with you?

1 L. Stewart

2 A. No. I took the knowledge of how to
3 build a library and I created my own.

4 Q. I see.

5 So you took the -- well, you just said
6 that you had the samples and the standards as
7 part of your library and then you took that with
8 you when you left.

9 A. No, I didn't say that.

10 Q. Okay.

11 So what specifically did you take with
12 you when you left the Secret Service?

13 A. The knowledge of how to do examinations
14 and how to create a library.

15 Q. After you left the Secret Service
16 everything in your library was collected after
17 that point?

18 A. In my private laboratory, yes.

19 Q. Nothing that's in your laboratory today
20 in terms of an actual sample or standard comes
21 from the Secret Service?

22 A. That's correct.

23 Q. And you have got no specific written
24 agreement that prohibits you from disclosing that
25 information, that's just what you feel is fair;

1 L. Stewart

2 is that right?

3 A. That's right. It's a moral agreement
4 in words that I've had with the industry.

5 Q. And what specifically is there that is
6 proprietary or confidential about the list of the
7 materials that you have in your library?

8 A. Composition and formula information.

9 Q. I'm handing you back your notes.

10 There's some sort of, like, on the -- I
11 see. This was the back of -- this is a color
12 copy of a back of a page; is that what's going on
13 here?

14 A. Yes, sir.

15 MR. SOUTHWELL: Let's just take a real
16 quick break. I want to look at this
17 document. Mr. Boland, you have to
18 understand that these are documents you have
19 not provided to us previously, so I need the
20 opportunity to look at them. I understand
21 you have travel arrangements, but let me
22 look at them and let me see if we can do
23 that and we will be right back.

24 MR. BOLAND: I'm not agreeing that we
25 haven't provided them, but I understand

1 L. Stewart

2 your position is that we haven't.

3 MR. SOUTHWELL: We'll be back as soon
4 as we can.

5 THE VIDEOGRAPHER: Going off the
6 record. The time is 6:36.

7 (Recess taken.)

8 THE VIDEOGRAPHER: We are back on the
9 record. The time is 6:41.

10 BY MR. SOUTHWELL:

11 Q. Mr. Stewart, referring you to
12 Defendants' Exhibit 26, you did not take any
13 samples of ink; is that right?

14 A. I don't know what Defendants' Exhibit
15 26 is.

16 Q. That reflects that you did not take any
17 ink samples; right? Or is there some other
18 inventory sheet?

19 A. There should be a different one that
20 has ink on it. This one is just for toner and
21 paper.

22 Q. A different form, okay. I see.
23 Another form that we don't have.

24 Does it look like this form, the
25 worksheet form, but you're saying it includes ink

1 L. Stewart

2 samples?

3 A. Yes. It should --

4 Q. It should look the same?

5 A. It should look the same, but it would
6 indicate that there's ink samples.

7 Q. You mentioned that when you were doing
8 the hard copy inspection, you used a digital
9 microscope, right, that was your testimony?

10 A. I believe I recall that I told you that
11 I would have to review the videotape to see, but
12 I think I recall taking one with me and using it.

13 Q. And what manufacturer is your digital
14 microscope that you used on that day?

15 A. I think I took a Pro Scope, but, again,
16 I would have to look at the videotape.

17 Q. And that would have been attached to
18 the computer; right? If it's digital, it's
19 attached to the computer to capture images; yes?

20 A. It would be attached to a laptop
21 computer, yes.

22 Q. And did you capture images using that?

23 A. If I had they would have been included.
24 I don't know if I did, I would have to look at
25 the videotape.

1 L. Stewart

2 Q. You would have to check the videotape
3 to reflect whether you had images? You don't
4 have another record of them such as the images?

5 A. I provided that to you back in
6 November. I would have to look at the meta tags
7 of each of them to see if they were taken with
8 that device or by a scanner.

9 Q. Now, you provided some expert opinion
10 regarding the staple holes.

11 Did you ever ask Mr. Argentieri where
12 the staple is?

13 A. I don't recall asking him that.

14 Q. Are you aware of where the staple is?
15 Did you take the staple out?

16 A. No. Based on the scanned images, we
17 can track when the staple was taken out, but not
18 exactly.

19 Q. When was the staple taken out, in your
20 opinion?

21 A. Sometime either as a result of the
22 Aginsky or Osborn examination or sometime between
23 then and when Mr. Argentieri brought it to
24 Buffalo.

25 Q. So prior to July 14, 2011, but after

1 L. Stewart

2 January 2011 the staple was removed from the Work
3 For Hire document; is that your opinion?

4 A. My opinion is that it happened sometime
5 prior to Buffalo. There is a scanned image from
6 the other experts showing that the staple was
7 still in the document, so at some point after
8 that the staple was removed.

9 Q. And by the other experts, you are
10 referring to Aginsky and Osborn; yes?

11 A. Yes.

12 Q. And you would agree that that's a
13 violation of all evidence collection procedures
14 to take a staple out of a questioned document and
15 not preserve the staple; correct?

16 A. Yes. I don't know who did that or why.

17 Q. But that would be a violation of all
18 generally recognized evidence collection
19 procedures with respect to questioned documents;
20 yes?

21 A. Yes. I can't imagine a reason to do
22 that.

23 MR. SOUTHWELL: Mr. Boland, I
24 understand that you have travel arrangements.

25 I have to say there are quite a few

1 L. Stewart

2 documents here that Mr. Stewart is relying
3 on and is referring to that have not been
4 produced and so, as an example, if we could
5 just mark this as Defendants' Exhibit 29,
6 these are his notes that we're seeing for
7 the first time just a few moments ago, he's
8 now revealed that there is an inventory of
9 ink, so, you know, I would request that he
10 produce his full file and that we will
11 review that and we are going to hold the
12 deposition open and see what other questions
13 we have of Mr. Stewart.

14 I understand that you've got travel
15 arrangements and I don't -- I want to be
16 accommodating to that, and so short of us
17 going through, making a copy and taking the
18 time to review it, which I think is our due,
19 I would request that you produce that to us
20 or, if you want, you can give that to us now
21 and we can resume on another day.

22 (Defendants' Exhibit 29, one-page
23 photocopy of handwritten notes by Mr.
24 Stewart, marked for identification, as of
25 this date.)

1 L. Stewart

2 MR. BOLAND: Either way you want it
3 produced.

4 Do you have a list of the items you are
5 saying he has not yet produced or --

6 MR. SOUTHWELL: Well, there is this
7 item, Defendants' 29, which we just got, so
8 I think we are entitled to some opportunity
9 to review it and compare how it relates to
10 Mr. Stewart's report and the other
11 documents. There is his inventory of ink
12 that he says exists that we have not seen
13 and there's the information about the
14 library of standards.

15 MR. BOLAND: I remember that request
16 and he indicated there were some proprietary
17 issues with providing that because
18 Mr. LaPorte has attempted to sort of
19 construct his own library on his back in
20 several cases.

21 MR. SOUTHWELL: And the witness has
22 testified that it is based on -- that he is
23 not bound by any written agreements with
24 respect to those, so, I mean, he can have
25 that opinion, I don't know that that's worth

1 L. Stewart

2 very much weight, and we can litigate that
3 opinion, if appropriate.

4 I don't think it contains proprietary
5 information, it lists the different toners
6 and the manufacturers. Maybe Mr. Stewart
7 could explain what's in that index.

8 MR. BOLAND: Obviously, we have a
9 difference of opinion. We say we've given
10 you all of the documents, you say we
11 haven't, that's fine, so if you want to
12 finish out the deposition time, then make a
13 motion.

14 MR. SOUTHWELL: Mr. Stewart is going to
15 be here for other days, we can simply
16 reconvene with him he's here on a day that
17 we're deposing defendants' experts.

18 MR. BOLAND: I don't know if he's going
19 to be here on other days, but if he is,
20 certainly, if that's convenient.

21 MR. SOUTHWELL: So I would ask that you
22 produce the documents either now or after
23 you make your flight and then we arrange to
24 reconvene to review those documents with
25 Mr. Stewart.

1 L. Stewart

2 MR. BOLAND: Well, I think he's
3 produced everything.

4 Why don't you just finish up your time
5 with him and then if you guys think he
6 hasn't produced everything, he'll produce
7 it.

8 MR. SOUTHWELL: I'm fine with stopping
9 at this point based on what we have laid out
10 and given the travel arrangements and we
11 will --

12 MR. BOLAND: I'm going to make my
13 travel arrangements because your deposition
14 is going to be over in time, I mean, with
15 the time that's left, I would have -- I
16 mean, it is almost that time anyhow.

17 MR. SOUTHWELL: So let's go. I am
18 trying to stop so you can make your
19 travel --

20 MR. BOLAND: I don't want the record to
21 reflect that you cut yourself off for my
22 travel arrangements. I'm saying the
23 allotted time you have left, you can
24 conclude and I'll still be able to make my
25 car because it's, I don't know, at this

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L. Stewart

point, like 10 more minutes or something,
but I appreciate the consideration.

MR. SOUTHWELL: I am prepared to stop
at this point and use whatever remaining
time we have to question Mr. Stewart about
the additional documents that I am
requesting be produced.

MR. BOLAND: And for the record, we're
not agreeing you can use additional time and
bring him back here for 10 minutes of
questioning, but whatever happens happens,
okay.

MR. SOUTHWELL: Okay.

MR. BOLAND: Very well.

THE VIDEOGRAPHER: Going off the
record. The time is 6:48.

(Time noted: 6:48 p.m.)

LARRY F. STEWART

Subscribed and sworn to before me
this ____ day of _____, 2012.

Notary Public

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C E R T I F I C A T E

STATE OF NEW YORK)
 : ss.
COUNTY OF NEW YORK)

I, CARY N. BIGELOW, Court Reporter,
a Notary Public within and for the State of
New York, do hereby certify:

That LARRY F. STEWART, the witness
whose testimony is hereinbefore set forth,
was duly sworn by me and that such
testimony given by the witness was taken
down stenographically by me and then
transcribed.

I further certify that I am not
related to any of the parties to this
action by blood or marriage, and that I am
in no way interested in the outcome of this
matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 12th day of July, 2012.

CARY N. BIGELOW

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----- I N D E X -----

3

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Larry Stewart in support of	
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plaintiff's forthcoming response to	
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10

defendants' motion to dismiss for	
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11

fraud	
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12

Defendants' Exhibit 14, photocopy of	25
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13

Work For Hire contract	
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14

Defendants' Exhibit 15, two-page	61
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15

printout from Internet of	
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blancostewart.com Web site	
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vitae of Larry F. Stewart	
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Defendants' Exhibit 18, letter dated	93
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2	document inspection protocol	
3	Defendants' Exhibit 20, excerpt from	129
4	transcript of deposition of Larry	
5	Stewart held on March 15, 2010	
6	Defendants' Exhibit 21, two-page	135
7	document entitled "STREET FAX" dated	
8	April 28, 2003	
9	Defendants' Exhibit 22, one-page	163
10	document labeled "Exhibit F" with	
11	attached report by Peter V. Tytell	
12	dated March 25, 2012	
13	Defendants' Exhibit 23, declaration of	167
14	Peter Tytell dated November 28, 2011	
15	Defendants' Exhibit 24, excerpts from	234
16	Albert S. Osborn's book "The Problem	
17	of Proof"	
18	Defendants' Exhibit 25, one-page	343
19	photograph of document	
20	Defendants' Exhibit 26, one-page	354
21	document headed "TLC Worksheet Form"	
22	Defendants' Exhibit 27, photocopy of	357
23	one page of handwritten notes by Mr.	
24	Stewart	
25	Defendants' Exhibit 28, one-page	366

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2 photograph of TLC plate

3 Defendants' Exhibit 29, one-page 376

4 photocopy of handwritten notes by Mr.

5 Stewart

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ERRATA SHEET
VERITEXT REPORTING COMPANY
1250 BROADWAY
NEW YORK, NEW YORK 10001
212-279-9424

NAME OF CASE: CEGLIA VS. ZUCKERBERG

DATE OF DEPOSITION: JULY 11, 2012

NAME OF DEPONENT: LARRY F. STEWART

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LARRY F. STEWART

SUBSCRIBED AND SWORN TO BEFORE ME

THIS _____ DAY OF _____, 20__.

(NOTARY PUBLIC)

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